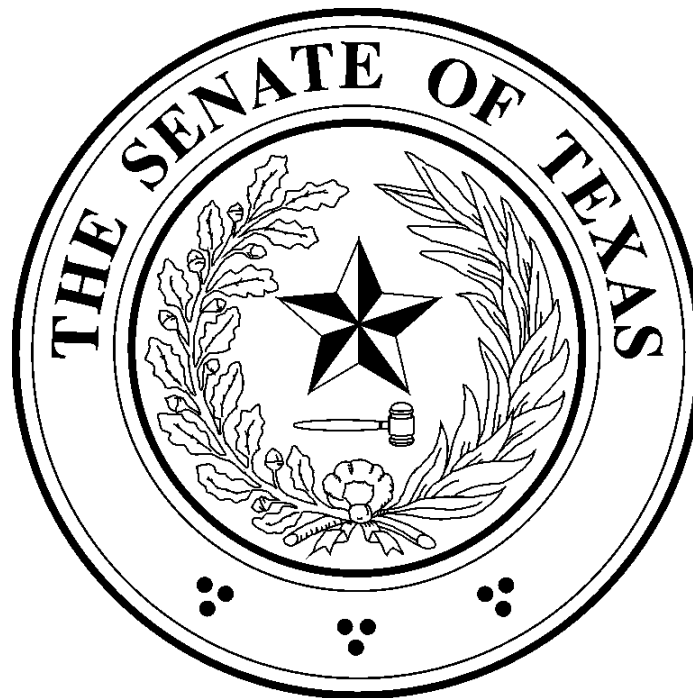


SENATE COMMITTEE ON CRIMINAL JUSTICE

Interim Report to the 81st Legislature



December 2008
Senator John WHITMIRE, Chair



SENATE CRIMINAL JUSTICE COMMITTEE

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December 15, 2008

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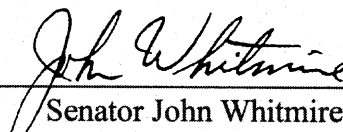
The Honorable David Dewhurst
Lieutenant Governor of the State of Texas
Capitol Building, 2nd Floor

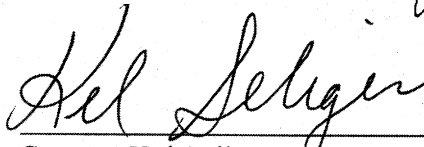
Dear Governor Dewhurst:

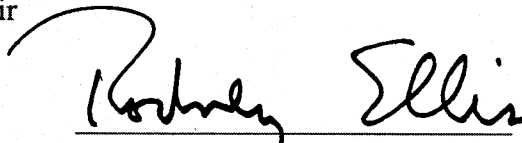
The Senate Committee on Criminal Justice submits its Interim Report in agreement with the Interim Charges that were issued this past year. The Criminal Justice Committee has held hearings over the last year to gather information on these charges. The hearings have been well attended and informative. In compliance with your request, a copy of this report will be circulated to all senators and other interested parties.

As you are aware, the charges that you issued to the Committee were very comprehensive and challenging. We have worked hard to respond to this challenge by developing broad recommendations that will benefit all Texans in the years to come. We anticipate that the Committee's recommendations will provide a guide for fiscal and operational improvement in the Texas Criminal Justice System. We thank you for your leadership and support.


Respectfully submitted,

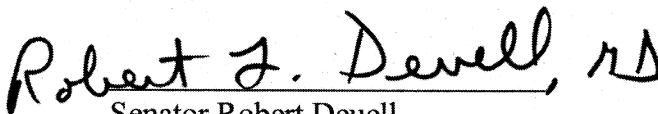

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Table of Contents

| | |
|--|------------|
| Executive Summary | 2 |
| Interim Charge One | 9 |
| Interim Charge Two | 20 |
| Interim Charge Three..... | 37 |
| Interim Charge Four | 46 |
| Interim Charge Five..... | 56 |
| Interim Charge Six..... | 65 |
| Interim Charge Seven..... | 70 |
| Interim Charge Eight | 76 |
| Interim Charge Nine | 81 |
| Interim Charge Ten..... | 89 |
| Interim Charge Eleven..... | 91 |
| Interim Charge Twelve..... | 96 |
| Minutes and Witness Lists | 104 |

EXECUTIVE SUMMARY

Interim Charge One Recommendations

Determine how private prisons are complying with state laws and how cost, safety, living conditions and rehabilitative services at private prisons compare with state-run facilities. Include an assessment of the staff turnover rates and compensation of private contractors when compared with state-operated facilities, and of the contract bidding processes used by the Texas Youth Commission and the Texas Department of Criminal Justice.

The committee's public hearing held on November 13, 2008, revealed that many concerns regarding privately-run correctional facilities pertained to the care given to inmates from other states that are housed in Texas. Currently the Texas Commission on Jail Standards has jurisdiction over private vendors that house out-of-state inmates. The committee recommends:

1. The Commission on Jail Standards review current standards for private vendors housing out-of-state inmates and audit all facilities providing this service.
2. Any vendors not meeting the requirement should be given a specified period of time to address any problems. If concerns are not addressed, contracts should be canceled and inmates should be moved.
3. All vendors should be required to disclose any information supporting terminated contracts as a result of the vendor not fulfilling their obligations in a Request for Proposal. The vendor must also disclose how they have addressed past concerns.

Interim Charge Two Recommendations

Monitor the implementation of Senate Bill 103 and the continuing reforms to the Texas Youth Commission and the juvenile criminal justice system. Identify barriers to effective implementation and provide recommendations to ensure that the goals of this legislation are achieved. Provide recommendations relating to best practices and identify needed additional treatment programs for juvenile sex offenders

Due to the concerns regarding the lack of implementation of reforms enacted by S.B. 103 and the allegations of continuing fiscal mismanagement, the committee recommends that the legislature pursue a juvenile justice system that will:

- provide rehabilitative services for youth in their communities;
- provide specialized treatment for all youth that require such treatment;
- ensure public safety;
- divert youth from entering the adult corrections system.

Interim Charge Three Recommendations

Study the impact of laws designed to reduce illegal drug use and make recommendations for reducing access to illegal drugs and for developing best practices for preventative

programs, focusing on drugs targeted for the younger population, such as cheese heroin. Assess the impact of limiting access to pseudoephedrine, including the impact restrictions have had on illegal manufacturers' methods for producing methamphetamine.

The Texas Legislature has recognized that illegal drug use remains one of the state's most challenging issues. During the last few sessions, legislation has been passed to reduce access to and use of illegal drugs. Some progress has been made in the reduction of access to illegal drugs as a result of past legislation and prevention reforms. It has also been recognized that of the population in need, only a small fraction is actually receiving drug treatment. The following summarizes the list of recommendations the Senate Committee on Criminal Justice makes to the legislature:

1. Continuing to place drugs containing pseudoephedrine, ephedrine, and norpseudoephedrine behind the counters of pharmacies, and continuation of the logging system.
2. Continuation of the Meth Watch Program.
3. Enhancing the capabilities of providing indigent drug treatment.

Interim Charge Four Recommendations

Monitor the implementation of the new and expanded programs provided to the Texas Department of Criminal Justice (TDCJ) within the Fiscal Year 2008 and 2009 budget, and identify their impact on the criminal justice populations. Study security issues within TDCJ, including staffing issues, use of lock down procedures, the control and containment of infectious diseases and the introduction and control of contraband within the institutions. Review the use of career ladders for employees of TDCJ and issues surrounding the retention of professional corrections staff. Study the issues of independent oversight of TDCJ, including the use and effectiveness of the TDCJ ombudsman system. Provide recommendations for the reduction or elimination of barriers to an effective corrections system.

Testimony before this committee revealed that the new and expanded treatment programs provided by the 80th Legislature are having the desired impact and are stabilizing the projected growth of our prison system. However major problems exist within TDCJ, mostly revolving around and created by the critical staff shortage that continues to plague this system. This committee recommends that the legislature during the 81st Legislative Session support appropriations to:

1. Continue the appropriations for the new and expanded treatment programs and provide funds to complete the total proposed package of programs. Maintain the appropriations for those implemented in Fiscal Year 2008 and 2009. Utilize state prison property to establish halfway houses and transitional treatment facilities, removing offenders from hard beds and relieving the backlog of those awaiting these services.

2. Support the appropriations for significant pay increases contained in the TDCJ LAR. Achieving full staff at all state facilities should be a primary objective for a safe and effective prison system.
3. Mandate the enhanced security procedures contained in Senator Whitmire's letter to Chairman Bell and Brad Livingston, along with supporting the funding to implement these measures within the standard operating procedures.
4. Reorganize the TDCJ ombudsman staff into an office under the Texas Board of Criminal Justice or move into a state-wide independent ombudsman agency.

Interim Charge Five Recommendations

Study and make recommendations for reducing the number of law enforcement officer deaths in the line of duty. This study should include:

- *an assessment of the types of calls and assignments that put law enforcement officers most at risk;*
- *the geographic regions of the state that suffer the most deaths;*
- *the agencies experiencing the highest rate of deaths in the line of duty;*
- *the time in an officer's career, and the officer's age that he or she is most susceptible to death in the line of duty; and*
- *the times of year, month, and day that are most dangerous.*

The public hearing conducted on this grave matter reveals that Texas police confront a variety of many dangerous duties and assignments, facing both known—and more often unknown—life threatening situations. The Texas Legislature has recognized this and, over the last several sessions, has enhanced the penalties for assaulting and/or murdering a police officer and their service animals. It has also mandated that traffic slow down and move over when law enforcement and emergency vehicles have their emergency lights on. Moreover, it has provided state law enforcement agencies with additional compensation, along with a state-of-the-art drivers training course for Troopers in the Department of Public Safety.

Among the incidents noted in the various reports, the increasing accidental deaths involving vehicle collisions are most disturbing, as they account for 56% of Texas officer deaths during the last three years. Factors such as the number of hours an officer had worked, involvement of overtime, and the condition and quality of the vehicles utilized remain undeveloped during this review. During the upcoming legislative session these factors should be included in preparing budgetary matters to ensure that the best practices are implemented in order to minimize these dangers and allow for the safe patrolling of our streets and highways.

Interim Charge Six Recommendations

Study the issue of criminal asset seizure and the use of seized and forfeiture funds by district attorneys and law enforcement agencies. Review the oversight of these matters by the Texas Attorney General and provide recommendations to improve the dissemination

of information concerning these funds. Ensure that these funds have the appropriate accountability and fiscal controls required for public funds

Asset forfeiture funding plays an important role in law enforcement funding. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens. With revisions made to Chapter 59, the legislature can bring more transparency and accountability into the civil asset forfeiture laws. The following summarizes the list of recommendations the Senate Committee on Criminal Justice makes to the legislature:

1. Imposing a filing deadline and a financial penalty for failure to comply with reporting requirements.
2. Establishing centralized oversight for the monitoring and maintenance of Chapter 59 reports.
3. Requiring the centralized depository to draft a more detailed audit report to give a more accurate explanation of expenditures.
4. Granting the centralized depository investigatory power and the ability to perform random outside audits. As well as the ability to penalize agencies shown violating the chapter.
5. Requiring the county treasurer to expend asset forfeiture funds at the direction of the prosecutor and removing the ability of the prosecutor to directly sign checks.
6. Listing specific examples of impermissible expenditures and clarifying penalties or punishment for those who violate the chapter.
7. For the return of property seized under civil law to the property owner, the burden of proving the “guilt” of the property should shift to the government.

Interim Charge Seven Recommendations

Study the system of deferred adjudication in Texas courts and make recommendations for resolving any problems and reducing the potential for release of dangerous criminals.

A review of the deferred adjudication process reveals that deferred adjudication is utilized by various people for various purposes. Presently there are dangerous criminals receiving deferred adjudication. To better protect our communities and to clarify the use of deferred adjudication, the Senate Committee on Criminal Justice presents the following recommendations to the legislature:

1. A change should be made in statute providing increased justification for a violent offender receiving deferred adjudication. Current law only mandates that the judge accepting the plea specifies that it is in the best interest of the victim. This should be expanded as to why it is in the best interest of the victim.
2. Upon successful completion of deferred adjudication, the court should be mandated to impose an immediate expunction of the criminal record in the case of a non-violent offender.

3. Statute should be adjusted to prevent the information on an individual from being entered into the conviction database of a non-violent offender.

Interim Charge Eight Recommendations

Study and recommend best practices for reducing re-victimization of child abuse victims associated with delay in resolution of criminal cases. Recommend options for reducing the time lapse between child victimization and criminal hearings

The committee encourages district judges trying criminal cases and the boards of district judges trying criminal cases to adopt the expressed best practices in cases involving child sexual assault victims by promulgation of a district judge rule. This rule should stipulate:

1. That all bonds in child sex abuse cases be contingent on the accused having no contact with the victim and no unsupervised contact with any child under the age of 17.
2. That the amount of bond is substantially raised if the accused violates this contingency.
3. If the child victim's care giver or legal guardian is indicated for allowing contact with the victim or another child, the result is automatic referral to Child Protective Services (CPS).
4. That cases which have a child sexual assault victim are given priority in docket settings, regardless of the accused being incarcerated in a County Jail or on bond.

Interim Charge Nine Recommendations

Review the processes for re-entry of criminal offenders into communities. Identify barriers to the successful return to law-abiding behavior, including the absence of employment opportunities created by restriction on obtaining certain state occupational licenses. Provide recommendations for improvements to our current statutes governing this matter.

Testimony presented at the committee's public hearing on November 13, 2008, revealed the importance of providing re-entry programs and services to offenders released from the various treatment programs provided during periods of incarceration. The committee recommends:

1. Enhance the resources for the various specialty courts such as the SAFP re-entry courts operating in Fort Bend, Dallas, and Angelina Counties.
2. Fully implement the halfway houses and other treatment residential programs envisioned in the programs appropriated through TDCJ by the 80th Legislature.
3. Passage of a statute providing provisional occupational licenses for former offenders such as those introduced in S. B. 1750 (80R). Increase the assistance provided to former offenders through Project RIO for tools that can be used in various trades.

4. Increase the number of offenders leaving from TDCJ facilities with state identification.

Interim Charge Ten Recommendations

Study whether Articles 36.09 (relating to trying multiple defendants from the same transaction either separately or jointly) and 36.10 (relating to severing defendants that show prejudice from a joint trial) of the Texas Code of Criminal Procedure provide sufficient safeguards to ensure fair and reliable trial results in capital cases with multiple defendants. Determine whether the articles provide trial judges with sufficient instruction regarding joinder or severance of defendants and, if not, make recommendations to improve procedures

The Texas Board of Pardons and Paroles recommended Kenneth Foster's sentence be commuted to life in prison on August 30, 2007, by a majority of 6 to 1. Governor Rick Perry accepted the recommendation of the board, and converted Foster's sentence to life in prison, with a possibility of parole in 2037. The commutation was confirmed a mere three hours before Foster was due to die by lethal injection.¹

In light of these circumstances, *the Committee recommends in a capital case, parties should be automatically severed* to defray the risk of substantially prejudicing the parties involved.

Interim Charge Eleven Recommendations

Study the relationship between the public mental health system and the criminal justice and civil courts systems, including the identification and sharing of information regarding mentally ill offenders, including minors, among criminal justice and mental health agencies, the courts, state hospitals, and the Veterans Administration. Study how current confidentiality laws impact the exchange of information among groups described above. Study the sentencing of mentally ill offenders compared to non-mentally ill offenders, including minors, and the affect that has on statewide prison capacity and on the health care provided to mentally ill offenders. (Joint Charge with Senate State Affairs Committee)

The Committee's review of this interim charge identified both the strengths and limitations on this state's response to persons with mental illnesses involved in the criminal justice system. In order to continue this state's position as a national leader and innovator, and address any shortcomings in the system, the Committee submits the following recommendations:

1. **To ensure uniformity in the court notification process, jails should be required to forward the mental health/suicide screening intake form to the courts within the 72 hours specified in current law.** The Texas Commission on Jail Standards (TCJS) has revised the intake form to include a reference to the

¹ *New York Times*. "Governor Commutes Sentence in Texas". Ralph Blumenthal. August 31, 2007.

- MHMR data match results. As a result, the form would serve as an excellent vehicle to notify the magistrates/courts of a defendant's MHMR service history and/or if a positive response to any of the mental health intake questions was noted.
2. **Require the Jail Commission to monitor compliance with the notification requirements by incorporating it in their standards and routine jail inspection process.** Status reports on implementation could be provided to the TCOOMMI Advisory as part of the Jail Commissioners routine update on Memorandum of Understanding (MOU) activities.
 3. **Require TDCJ-TCOOMMI to review and monitor the implementation of policy impacting offenders with mental illness.** This activity could be incorporated into the office's routine continuity of care monitoring that is statutorily required.
 4. **Conduct an annual summit of key mental health and criminal justice stakeholders to obtain feedback on statutory, regulatory and programmatic practices and challenges.** This activity would allow a formalized exchange of information on what is working and areas that require further improvement.
 5. **Require TDCJ-TCOOMMI to examine strategies for reducing the number of arrests/incarcerations of individuals with mental illnesses who are considered "frequent flyers" by the local jail and law enforcement officials.** This examination should review the existing statutory and programmatic practices that may need to be revised to minimize or eliminate the number of criminal justice encounters for certain populations.

Interim Charge Twelve Recommendations

Monitor the implementation of legislation addressed by the Criminal Justice Committee, 80th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, report on the implementation of S.B. 909, the Texas Department of Criminal Justice Sunset legislation, including provisions relating to the Board of Pardons and Paroles, and monitor implementation of the new laws relating to copper theft (S.B. 1154, H.B. 1766, and H.B. 1767).

This committee recommends that Section 508.144, subsection (b) of the Government Code be amended to clearly state the legislative intent of this section—that it applies to the individual inmate and his specific guideline score, when the guideline score is a 5, 6, or 7. It is further recommended that all guideline scores become public record and that an individual inmate is informed of his specific guideline score.

INTERIM CHARGE ONE

Determine how private prisons are complying with state laws and how cost, safety, living conditions and rehabilitative services at private prisons compare with state-run facilities. Include an assessment of the staff turnover rates and compensation of private contractors when compared with state-operated facilities, and of the contract bidding processes used by the Texas Youth Commission and the Texas Department of Criminal Justice.

Introduction

The Senate Committee on Criminal Justice conducted a public hearing on this charge on November 13, 2008. Invited testimony was provided by Brad Livingston, Executive Director of the Texas Department of Criminal Justice, and Cheri Townsend, Executive Commissioner of the Texas Youth Commission. Public testimony was provided by Ronald Rodriguez, Bob Libal, Daniel McCullough, Shirley Noble, Lauren Reinlie, and Laurie Williams.

Private Prisons Operated by TDCJ

Written testimony from the Texas Department of Criminal Justice (TDCJ) provides the following information concerning private prisons contracted for operations under TDCJ and monitored by the Contract Monitoring Division of TDCJ:

The seven private prisons provide comparable living conditions and are in compliance with the statutory requirements identified in Chapter 495 of the Government Code, to include maintaining accreditation from the American Correctional Association, confining no greater than medium security inmates, and achieving not less than ten percent of the cost of housing inmates in similar facilities and providing similar programs to those types of inmates in state-operated facilities. Note, the Legislative Budget Board annually calculates the cost-per-day figures for state operated and privately operated facilities.

As required by Chapter 495, private prisons are neither computing inmate release and parole eligibility dates; awarding good conduct time; approving an inmate for work, medical, or temporary furlough; or classifying an inmate or placing an inmate in less restrictive custody than the custody ordered by the institutional division.

During FY 2008 the correctional officer turnover rate at the seven private prisons was 90 percent (60 percent for the five privately-operated state jails), which in either case is higher than the 24 percent turnover rate for TDCJ correctional officers during FY 2008.

The wages and benefits paid to employees of private contractors are generally lower than that paid to employees of state-operated facilities, but are compliant with the terms of the contract and may facilitate compliance with the cost savings required by statute. Correctional officer salaries in the private prisons vary among facilities, with the highest peaking at slightly more than \$24,000 annually.

TDCJ Contract Bidding Process for Private Prisons

The following is a brief summary of the Texas Department of Criminal Justice's contract bidding process, also furnished by TDCJ in written testimony:

- Request for Proposals compiled to include agency's complete requirements, including:
 - Statement of services to be performed
 - Contract terms
 - Contract compliance provisions
 - Contract audit and monitoring provisions
 - Insurance requirements
 - Contract termination provisions
- Perform Objective Proposal Evaluation
 - Review proposals for initial qualifications and acceptability
 - Multi-discipline teams evaluate proposals
 - Use weighted evaluation criteria such as:
 - Cost
 - Technical Capability/Operational Plan (Security and/or Program)
 - Experience
 - Past Performance
 - Financial Strength
 - Technical and cost evaluation are numerically scored separately, then integrated
- Contract Negotiations
 - Perform technical and cost negotiations
 - Request submission of "Best and Final Offers"
- Contractor Selection
 - Cost and Technical Evaluation Teams make recommendation for award, based on Best Value as determined by integrated scoring, to the Source Selection Authority Board, which is comprised of senior management
 - The Source Selection Authority Board makes final decision on selection
- Contract Award
- Contract Administration
 - Monitor contractor performance
 - Obtain updated insurance certificates, monthly HUB Subcontracting reports, etc.
 - Send cure notice and request for corrective action plan for non-compliance issues
 - Deduct monies for any noncompliance in meeting established performance measures identified in contract

- Financial audits of specific funds (medical co-pays, commissary, etc.)
- Modify contract, if applicable
- Terminate contract if contractor continually does not perform
- Complete contractor performance evaluation at contract close-out and ensure final payment has been made.

Written Testimony from the Texas Youth Commission

How are private prisons complying with state laws?

All entities providing juvenile justice services to the children of Texas are required to comply with laws and regulations relative to their operations and must meet certain minimum standards.²

How do cost, safety, living conditions, and rehabilitative services at private prisons compare with state-run facilities?

In addition to state laws referenced above, those private facilities with which TYC contracts must meet standards commensurate with the state-run facilities.

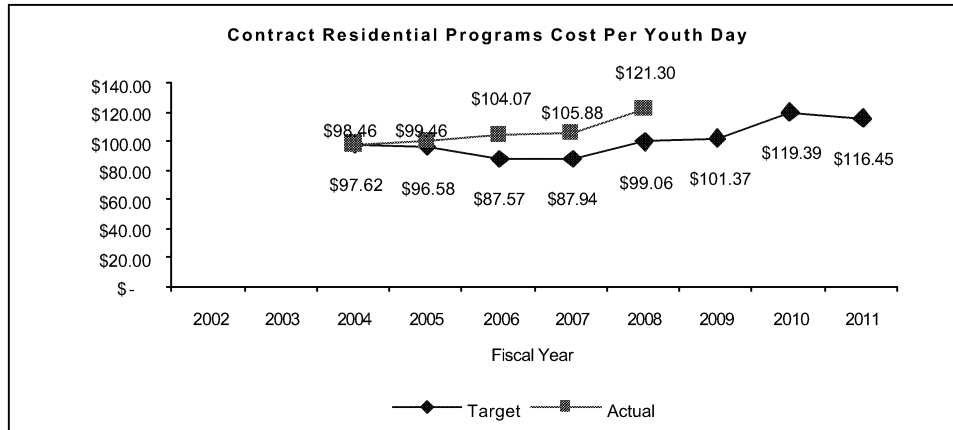
Comparing Costs

Historically, TYC's total cost per youth per day to provide services compared to contract care and halfway houses has been slightly higher:

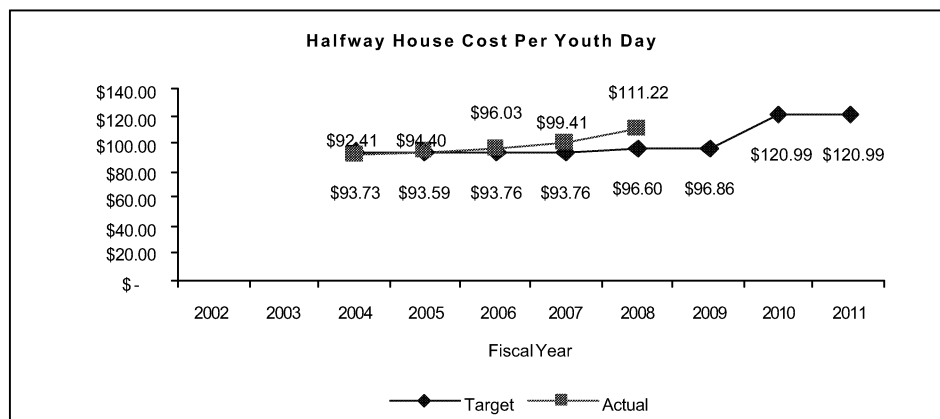
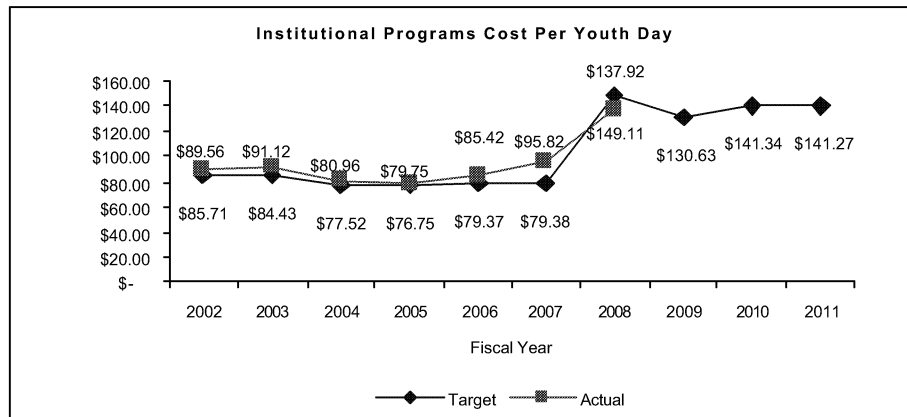
- In FY 2008, the budgeted average cost per day per youth:
 - \$149.11 in state-operated institutions, ranging from \$151.72 to \$249.28
 - \$96.60 in state-operated halfway houses, ranging from \$132.02 to \$150.55
 - \$99.06 in contract care facilities, ranging from \$50.30 to \$215.00

Below are the performance targets and actuals for FY2004-08 for contracted residential services. These measures equal the total expenditures for the category divided by the total number of youth served and days in the time period. These charts present costs per youth day for each fiscal year for which the measure was in place. Targets are based on the total number of youth projected to be served. The cost per youth per day rose for every measure in FY2008 because the total number of youth served decreased over the course of the year. Static operational costs and reduced ratios resulted in a higher ratio of expenditures to youth.

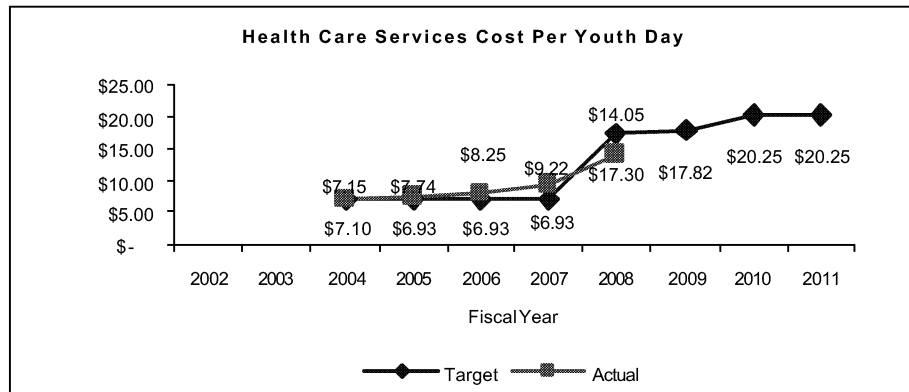
² Human Resources Code, Title 3, Facilities and Services for Children; Human Resources Code, Chapter 42, Regulation of Certain Homes and Facilities that Provide Child Care Services



Please note the performance targets and actual for TYC residential programs by type (institution, halfway houses):



The costs per day for contracted health care services are shown below:



Comparing Living Conditions

Living conditions for youth in a state-run facility and a privately-run facility are essentially of the same quality. TYC monitors contractual compliance with living condition standards through Quality Assurance (QA) staff, whose job it is to conduct frequent site visits to ensure they are run according to contractual requirements.

Comparing Rehabilitative Services

At the present time TYC contracts with 15 privately-operated secure facilities, halfway houses, group homes, and contract parole service providers in 173 Texas counties. Those programs, services and facilities comply with all of the same requirements as the state-operated secure facilities, or state schools do, according to type. In addition, Quality Assurance (QA) Specialists, augmented by Internal Audit functions within TYC include regular site visits at the state schools, as well as the various privately-contracted services.

The table below shows the contract care facilities providing some type of treatment services and the type of services offered to youth placed in TYC:

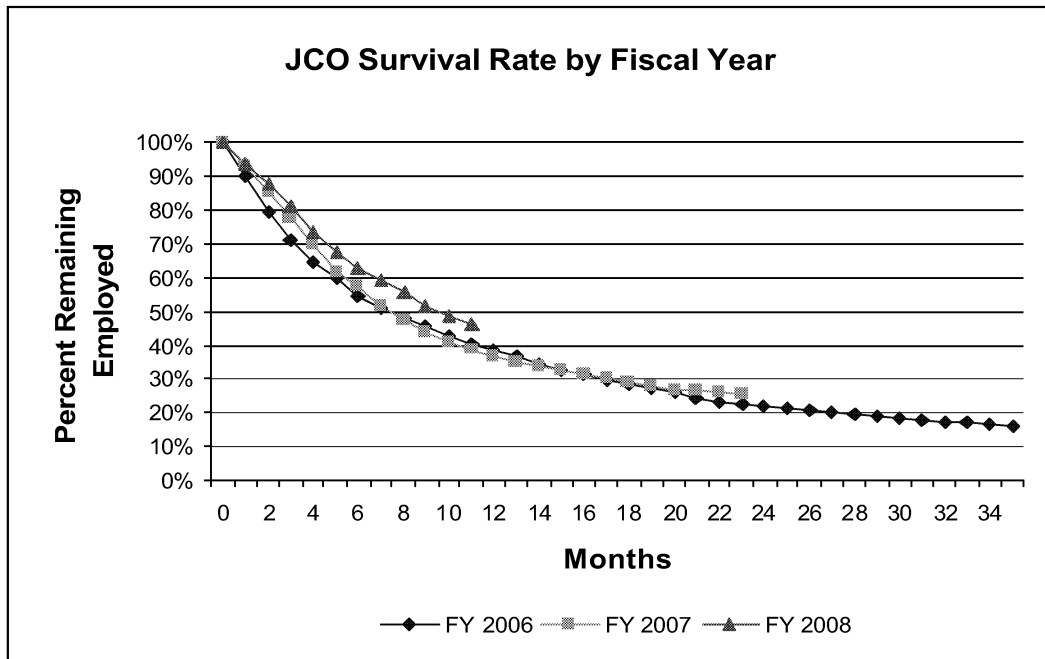
| Contract Placement Location | Type of Services | Capacity |
|--|---|-----------------|
| Abraxas Youth & Family Services San Antonio, TX Bexar County | Facility for younger boys (age 10-14). Treatment for victims of sexual and/or physical abuse, domestic violence, and aggression | 26 |
| Associated Marine Institutes, Inc. dba RGMI Los Fresnos, TX Cameron County | Transitional Treatment Program – academic education, vocational training, independent living preparation | 32 |
| Brookhaven Youth Ranch, Inc. West, TX McLennan County | Residential Treatment Center – academic education, sex offender treatment, behavior/anger management, substance abuse counseling, psychological counseling, cognitive skills training, mental health treatment | 32 |
| Byrds Therapeutic Group Home Houston, TX Harris County | Therapeutic Group Home – vocational training, sex offender treatment, substance abuse counseling, psychological counseling, cognitive skills training | 10 |
| Garza County Regional Juvenile Center – Post, TX Garza County | Academic education, psychological counseling, parenting, cognitive skills training, violence prevention, transitional treatment programming | 48 |
| Gulf Coast Trades Center New Waverly, TX Walker County | Vocational training, academic education, behavior/anger management, substance abuse counseling, psychological counseling, cognitive skills training, violence prevention | 48 |
| Mel Matthews Vocational Center Cisco, TX Eastland County | Vocational training, academic education, behavior/anger management, substance abuse counseling, psychological counseling, cognitive skills training, violence prevention | 32 |
| W.I.N.G.S. for Life, Inc. – AMI Marion, TX Guadalupe County | Mother-Baby Program – academic education, vocational training, behavior/anger management, parenting, independent living, psychological counseling, substance abuse counseling | 14 |

Assessment and Comparison of Staff Turnover Rates and Compensation

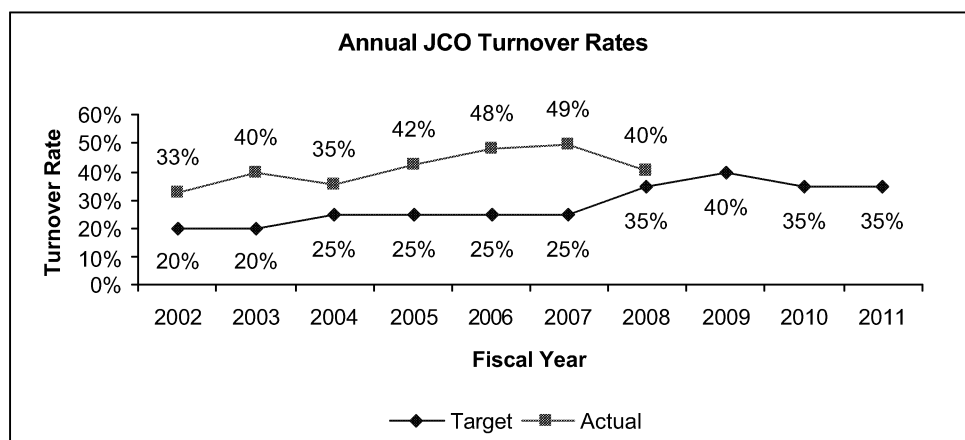
Private providers compete for the same population of potential correctional employees as does TYC and the TDCJ. The general requirements and background are very similar. This being the case, the particulars of staff turnover are likely similar between entities as well. TYC and TDCJ have the same correctional officer salary ranges and benefits. Competitive compensation packages put potential employees in the enviable position of being able to pick and choose which agency or company they plan to join. Often, the decision is based upon proximity to home and family rather than compensation.

After growing steadily from 2002-2007, the Juvenile Correctional Officer (JCO) turnover rate at TYC decreased to 40%. Two major factors contributed to the decrease: 1) the recruitment of 1200 JCOs and a net gain of 200 by a team of recruiters and 2) an enhanced compensation program for JCOs.

Although the agency continues to compete for employees with the oil industry and adult corrections, the tables below show that TYC JCOs stayed with the agency at a higher rate than in the past two years. This enhances safety within our facilities because fewer shifts are left unsupported while new staffs are in training.

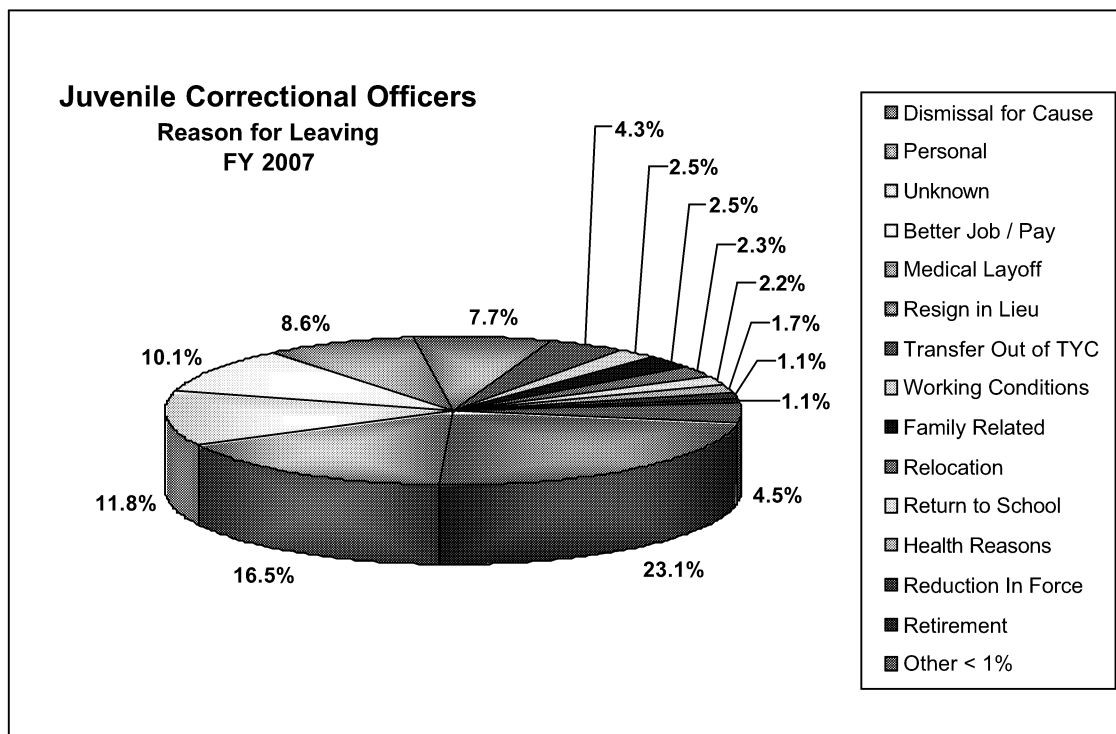
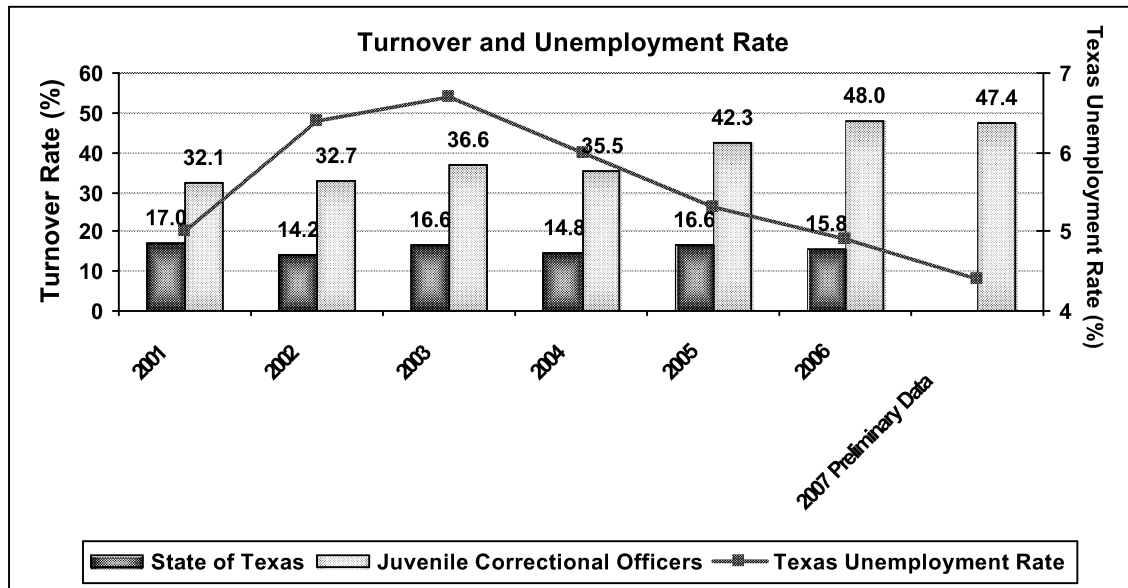


- JCOs hired during FY2008 remained employed at higher rates than those hired during FY2007 or FY2006.
- Retaining JCO positions increases stability at agency institutions and, therefore, increases safety.



These data show that turnover in the JCO positions are down and retention is up compared to past years.

Provided for comparison in the tables below is information concerning TYC's staff turnover rates for the past fiscal year and reasons staff left when they did.



TYC's Contract Bidding Process

Because TYC and the Texas Department of Criminal Justice (TDCJ) are both state agencies, they must comply with the State Comptroller requirements, in general, for the contract bidding process.³ Private entities must also comply with state regulations. An example of these regulations in TYC is the recently awarded contract to Abraxas Youth and Family Services, which provides programming and a secure environment for younger boys (ages 10-14). As per state regulations, this private provider responded to a Texas Register advertised RFP (Request for Proposal) for this type of facility, and through a closely monitored process, was selected by the agency as a contract care service provider. This facility, which can admit up to 46 boys, is now operating in San Antonio. The RFP document includes all of the quality assurance standard specifications and TYC policies with which applicants must comply in order to be considered. TYC's policies, procedures, and practices for contract development and management comply with state statutory requirements and procurement rules, including the Contract Management Guide and relevant Government Code provisions that govern procurement practices at most state agencies.

- The agency also is authorized by the Texas Human Resources Code, §61.037, and Texas Government Code, §2155.143, to contract with external entities for the care and treatment of TYC youth. TYC has used these provisions to contract for residential services both with and without a formal Request for Proposals (RFP) process.
- Additionally, the agency has operated under Conservatorship since March 2007 pursuant to the Texas Government Code, Chapter 2104. As an agency under Conservatorship, TYC must comply with additional reporting obligations and may use the expanded contractual powers authorized by Chapter 2104.
- The agency contracts with a broad range of public and private entities that provide 24-hour residential custody of delinquent youth, including housing, food, clothing, and medical care. TYC's contracts with private and public providers include secure juvenile corrections facilities and non-secure residential services providers including those that support specialized treatment for small populations within TYC that have special needs. These specialized treatment and small populations programs would be costly and difficult to create and operate within TYC institutions.

Continuing Allegations of Fiscal Mismanagement by TYC

During the interim of the 80th Legislative Session, issues arose that resulted in the co-chairs of the Joint Select Committee on the Operation and Management of the Texas Youth Commission to request a complete audit of TYC's spending of appropriated funds for Fiscal Year 2008. A letter from Senator Whitmire and Representative Madden to State Auditor John Keel contained the following:

³ Government Code Chapter 2155 A, General Provisions

The Joint Select Committee on the Operation and Management of the Texas Youth Commission request a full audit by the State Auditor's Office of the Fiscal Year 2008 expenditures by the Texas Youth Commission. The Texas Youth Commission is continuing a pattern of, what appears to us, a willful disregard for the spending parameters set by the legislature. TYC was placed into Conservatorship due to gross fiscal mismanagement. We want to ensure that gross fiscal mismanagement is not continuing.

Instead of spending money retaining and attracting new JCO's, TYC has chosen to increase central office personnel. In addition, we have seen evidence that large salary increases are being given to executive staff members. Yet today, our juvenile correctional system sits without a functional classification system or proven treatment and educational programs.

We understand that they are continuing to spend millions of dollars worth of capitol improvements on facilities that were recommended for closure by your office utilizing funds to continue their operations that were not appropriated for that purpose.

We appreciate your efforts in this matter and look forward to cooperating with you in this endeavor.

Another issue was indentified in August of 2008 that many considered to be a further example of wasteful and inappropriate spending by TYC. It was discovered that in July of 2008 TYC contracted with Youth Services International, a Florida-based company, to open a facility in Eagle Lake, Texas. Although no youth had been placed in the facility, TYC paid over \$1.26 million for empty beds. At the committee's public hearing on November 13, 2008, Ms. Townsend stated that this contract was cancelled, at least two payments had been held back, and none of the funds previously distributed had been returned.

Additional Issues

Much of the public testimony during the committee's hearing revolved around the lack of State oversight of contractors who operate private prisons in Texas and incarcerate offenders from other states. Under current Texas law, this oversight remains with the state contracting with these vendors to enforce their contract and monitor the conditions of those incarcerated. Recent events have demonstrated that local law enforcement can investigate and the local district attorney can prosecute alleged criminal violations against individuals or the corporation operating these facilities. Suggested solutions include prohibiting these types of for-profit prisons or improving oversight by assigning enforcement capabilities to an appropriate Texas State agency.

As a follow-up to the issues raised during the committee's public hearing, Senator Hinojosa wrote a letter to Brad Livingston, Executive Director of TDCJ, to make two formal requests. The letter contained the following:

My first request is that TDCJ provide a three-year numerical comparison between TDCJ's secure correctional facilities and its secure contracted facilities to include the following statistics: inmate deaths, suicide attempts, allegations and confirmations of abuse, physical and sexual assaults (among both inmates and staff), and riots.

Second, I am reiterating my request that factors such as a vendor's history of lawsuits, inmate or employee deaths, judgments, and other indicators of ethical and economic liability be included as performance indicators in TDCJ's RFP review process. I understand that as with all state agencies, TDCJ is expected to budget conservatively, but cost-savings should not be achieved at the expense of inmates' safety, health, and rehabilitation.

I look forward to your prompt response and our continuing to work together on this important issue.

Recommendations

The committee's public hearing held on November 13, 2008, revealed that many concerns regarding privately-run correctional facilities pertained to the care given to inmates from other states that are housed in Texas. Currently the Texas Commission on Jail Standards has jurisdiction over private vendors that house out-of-state inmates. The committee recommends:

1. The Commission on Jail Standards review current standards for private vendors housing out-of-state inmates and audit all facilities providing this service.
2. Any vendors not meeting the requirement should be given a specified period of time to address any problems. If concerns are not addressed, contracts should be canceled and inmates should be moved.
3. All vendors should be required to disclose any information supporting terminated contracts as a result of the vendor not fulfilling their obligations in a Request for Proposal. The vendor must also disclose how they have addressed past concerns.

INTERIM CHARGE TWO

Monitor the implementation of Senate Bill 103 and the continuing reforms to the Texas Youth Commission and the juvenile criminal justice system. Identify barriers to effective implementation and provide recommendations to ensure that the goals of this legislation are achieved. Provide recommendations relating to best practices and identify needed additional treatment programs for juvenile sex offenders.

Introduction

The sponsor's statement of the purpose and intent for Senate Bill 103 (80R) provides the rationalization and the purpose for the passage of the act:

Research has shown that many of the youth incarcerated with the Texas Youth Commission (TYC) were physically abused by employees, and the rate of such occurrences has drastically increased in recent years. Turnover rates and inadequate training of employees at TYC are major contributors to the increasing abuse. Recruiting and retaining staff have been major challenges for TYC. The lack of a criminal investigation division within TYC is another contributor to the increasing rate of violence, both to youth and staff. Lowering the ratio of youth to staff, increasing the amount of training for employees, and providing independent investigations of alleged crimes could reduce the rate of abuse and violence occurring at TYC facilities.

S.B. 103 requires TYC to provide 300 hours of training to guards before they begin their duties at facilities and to maintain a ratio of at least one guard for every 12 youth committed to the facility. S.B. 103 requires TYC to establish an office of inspector general for the purpose of investigating criminal acts among TYC youth, guards, and other TYC employees, and reporting the results of any investigation to the TYC Board. S.B. 103 prohibits TYC from assigning a child younger than 15 years of age to the same dormitory as a youth at least 17 years of age. S.B. 103 requires the Texas Rangers to make monthly unannounced visits to facilities and to submit reports to the Texas Sunset Advisory Commission for inclusion in TYC's sunset review evaluation.

Texas Youth Commission Progress

In response to this committee's review of the Texas Youth Commission (TYC), the agency provided detailed written testimony which provides:

TYC is progressing in many areas delineated in S.B. 103. The primary charge in the law was accountability, and specifically that TYC find ways to keep youth safe while in TYC custody. The agency's conservator has provided frequent updates to the Joint Select Committee on the Operation and Management of the Texas Youth Commission and the Criminal Justice Legislative Oversight Committee overseeing the operations of TYC during hearings, in reform updates, and in other documents and ad hoc meetings.

TYC youth are safer because TYC has initiated an in-house law enforcement function which has been expanded to include criminal and administrative investigations, thus providing swift and seamless responses to allegations of abuse, mistreatment, exploitation and criminal behavior. The Incident Reporting Center (IRC) at the TYC Central Office houses the agency “hot line,” a toll-free phone line available to all staff and youth within the agency and the general public, dedicated to make reporting these allegations easy.

Youth are safer because open dorm units are being converted to single room units and every facility is equipped with a larger number and higher quality of surveillance cameras.

Youth are safer because TYC staff is better trained to work with our specialized population. The Juvenile Corrections Officer (JCO) now receives 300 hours of pre-service training which is being constantly updated to include, for example, the requirements of the Prison Rape Elimination Act (PREA), Cognitive Skills, Thinking for a Change, Thinking Report and Motivational Interviewing. Some of this training is offered to parole officers, case managers and other psychology department staff as in-service training.

It should also be noted that the intent of S.B. 103 has always been that there be an actual and philosophical openness that would allow advocacy groups, families, and the public more access to agency-run facilities housing youth, as well as how a reformed TYC operates. This openness or transparency affords greatly increased monitoring by a number of persons and entities on an almost continual basis. Additionally, TYC employees throughout the agency have been encouraged to assist any persons with this new, increased level of access to agency operations. For example, the public is now routinely invited to comment on proposed changes to TYC policies and, upon request may attend public hearings on each one. The recently published “Parents’ Bill of Rights” is yet another example of cooperative initiatives involving agency officials, parents, advocacy representatives, and even the youth themselves. Such a group met at the Giddings State School facility over several months and in face-to-face talks they were able to come to consensus about what the “Parents’ Bill of Rights” would become. The Parents’ Bill of Rights document and handbook are just one of many initiatives in which we have begun to involve families in the rehabilitation of youth. Youth and family advocates as well as Youth Rights Specialists are now stationed at every campus. Several of the state schools have extremely active volunteer groups who help guide and coordinate community service projects for youth to have the opportunity to give back some of what they “took” from their own communities. All of these activities are dedicated to facilitating family involvement and obtaining the greatest benefit available for all concerned. The CoNEXTions Program in TYC encourages family visits and letters. Quarterly multi-family conferences are held to assist parents and guardians to better understand and provide meaningful, appropriate support for youth in TYC facilities.

Residential facilities have been transitioning from the former Re-socialization, or “phases” system of behavior management, to the new CoNEXTions Program.

CoNEXTions is an evidence-based, youth-centered, and flexible program which focuses on an individual youth's risk factors (what caused him or her to come to the juvenile justice system) and protective factors (what keeps him or her from returning to the system). Through CoNEXTions, more intensive supplemental treatment is available for youth with higher needs for specialized care provided by specially trained and licensed staff. Central to establishing the type and extent of youths' needs in CoNEXTions is the PACT (Positive Achievement Change Tool) component for which the agency contracted with Assessments.com. This will provide TYC with cutting edge assessment and classification capability.

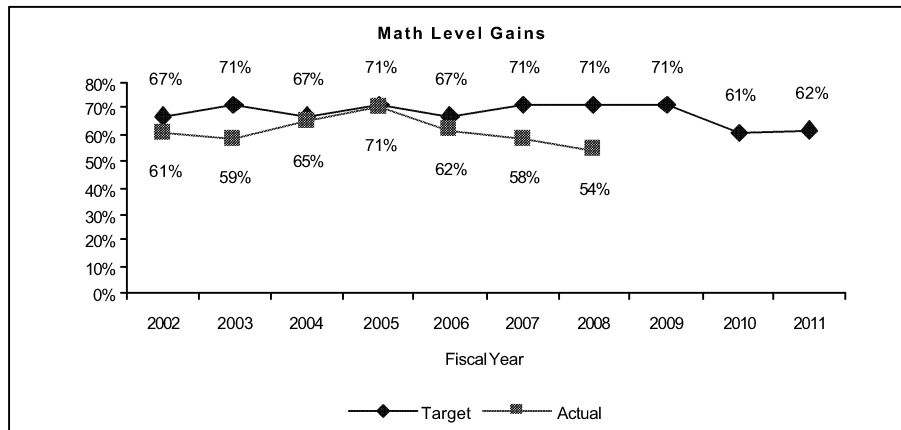
Barriers to Effective Implementation of S.B. 103

These are some of the factors that delayed the effective implementation of S.B. 103:

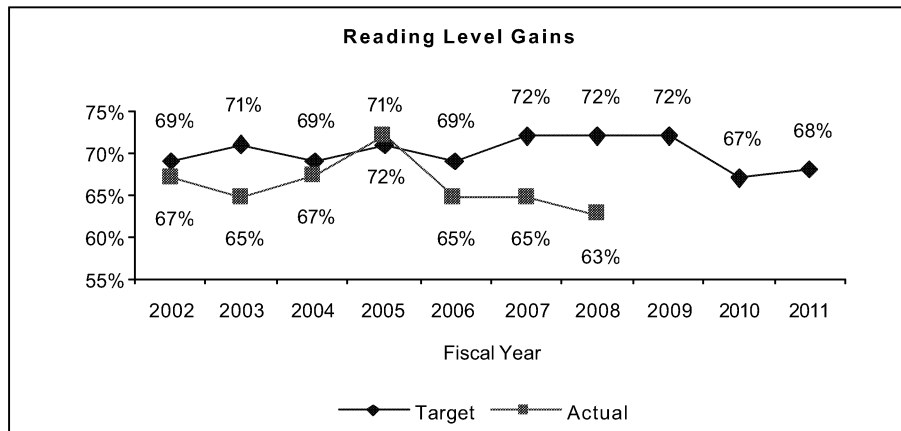
- The lack of permanent agency leadership over the past twenty months caused a series of stops and starts in implementation progress as each successor familiarized themselves with S.B. 103 requirements, and determined their own priorities.
- Competing priorities for the same resources has caused delays and prevented implementation of certain S.B. 103 requirements. A prime example of this has been constant competition for information technology services that cannot serve every need at the same time.

Despite these barriers, TYC has accomplished many of the performance targets set by the legislature as well as those it set for itself and has been able to quantify where deficits lie. For example, relative to youth education, level gains are those that occur while youth in a TYC-operated institution increase in reading or math during the fiscal year. The percentage of youth making gains has decreased because of instabilities in the learning environments caused by frequent movements of youth from facility to facility. TYC has made a focused effort to avoid moving youth without coordination with the education as well as treatment staff. Additionally, the agency is reviewing the assessment tool for education.

The TABE, an assessment tool which is used to measure grade levels and gains, is used for all TYC youth. The accuracy of this test may be reduced due to low student motivation during the orientation period when it is taken.



Math level gains during the 4th quarter dropped to 51%. The only institutions with performance above the target level were Ron Jackson State Juvenile Correctional Complex Unit II and Gainesville State School. The lowest performing were Victory Field Correctional Academy, Al Price State Juvenile Correctional Facility, McLennan County Juvenile Correctional Facility Unit II, and Crocket State School.



Reading level gains during the 4th quarter were similar to the annual total at 62%. The only institutions with performance above the target level were Ron Jackson State Juvenile Correctional Complex Unit II and Gainesville State School. The lowest performing were McLennan County State Juvenile Correctional Facility Unit I, Giddings State School, Victory Field Correctional Academy, Crocket State School, McLennan County State Juvenile Correctional Facility Unit II, Al Price State Juvenile Correctional Facility, Ron Jackson State Juvenile Correctional Complex Unit I, and Corsicana Residential Treatment Center.

Recommendations to Achieve Goals of S.B. 103

Recommendations to ensure the goals of the legislation are achieved include some suggested changes to state law. These changes have the potential to eliminate some of the barriers TYC staff experience as they strive to implement S.B. 103.

Suggested Statutory Reforms

Several suggested statutory revisions to address the issues referenced above are described below:

Admission into School

Human Resources Code §61.081 allows TYC to release under supervision a child in its custody and place the child in his or her home or in any situation or family approved by the commission. Some school districts refuse admission of youth when TYC places the youth in a home of a person not a parent because the school district considers the placement to be made without a court order.

Education Code §25.001 (f) provides that a child placed in foster care by an agency of the state or by a political subdivision shall be permitted to attend the public school in the district in which the foster parents reside. Texas Education Agency (TEA) has interpreted section (f) to include a placement by TYC; however, when TYC places a youth with a non-parent, some school districts still do not consider TYC's authority to place sufficient for admissions.

Recommendation: Amend Education Code §25.001 (f) to specifically include TYC as an agency with home placement authority, or a separate provision could be added specifying that youth placed by TYC in a residence shall be admitted in the school district. In the alternative, a similar provision could be added to Human Resources Code Chapter 61.

Placement in Alternative School Programs

Texas Education Code Chapter 37 provides for the permissive and mandatory expulsion and removal of students to the Discipline Alternative Education Program (DAEP) or Juvenile Justice Alternative Education Program (JJAEP) if a student commits certain offenses. At least one school district has attempted to remove a TYC youth returning to the school district to an alternative education program based upon the offense for which the youth was committed to TYC.

Recommendation: Amend Education Code §§ 37.006 and 37.007 to clarify that removal of a youth to an alternative education program or expulsion from school must be based upon current behavior at the school and not prior adjudicated behavior.

Interagency Sharing of Youth Information

In order to provide comprehensive services with other state agencies such as Department of Family and Protective Services (DFPS) or Texas Workforce Commission (TWC), TYC needs the ability to share youth information relevant to the provision of those services. Family Code §58.005 only allows TYC to share information with a person or entity to whom the child is referred for treatment services. This provision does not cover youth between the ages 17 and 19, nor does it

permit the release of information for non-treatment services that would assist in transition to the community.

Recommendation: Amend Human Resources Code §61.0731 to allow TYC to share youth information with other entities to whom the youth is referred for treatment or services if the entity enters into a written confidentiality agreement regarding the protection of the disclosed information.

Sex Offender Registration Requirements

Code of Criminal Procedure Art. 62.352 (affecting registration requirements for youth adjudicated for a sex registerable offense) allows the court to defer the decision requiring registration until the youth has completed treatment for the sex offense as a condition of probation or while committed to TYC. The court retains discretion and jurisdiction to require or exempt the registration requirement. Code of Criminal Procedure Article 62.053 requires TYC to register any youth with a reportable adjudication upon release from a high restriction facility. This provision applies regardless of the offense for which the youth was committed to TYC.

This presents a legal issue with regard to TYC's registration of youth upon release that could be clarified to ensure that TYC registers youth in the correct circumstances:

- (1) When the deferral provision does not address what should occur if a youth does not complete treatment for the sex offense, TYC registers the youth according to Code of Criminal Procedure Article 62.053. Some juvenile justice practitioners believe the court's decision to require registration is deferred and therefore, the court must make the decision concerning registration once the period of deferral is complete regardless of successful completion of treatment.

Code of Criminal Procedure Article 62.352 allows the juvenile court to "enter an order: (1) deferring decision on requiring registration under this chapter until the respondent has completed treatment for the respondent's sex offense as a condition of probation or while committed to TYC." The decision on whether to register a youth who successfully completes treatment is simple. The statute indicates that a youth is exempt from registration if the youth successfully completes treatment; therefore the youth is not required to register. However, the statute is silent on what should occur if a youth does not successfully complete treatment for the sex offense.

- (2) Article 62.352(c) allows the court to retain "discretion and jurisdiction to require, or exempt the respondent (youth) from, registration under this chapter at any time during the treatment or on the successful or unsuccessful completion of treatment, except that during the period of deferral, registration may not be required." Texas Juvenile Law experts have expressed two opinions on how to interpret this provision:

(1) Since the order is merely a deferral of the decision on whether to require registration the deferral period continues until the court makes a decision. Therefore, if a youth is committed to TYC and does not complete treatment while in TYC, TYC cannot register the youth unless the court orders registration.

(2) The deferral period only extends while the youth is on probation or while committed to TYC. As such, TYC must register the youth upon release pursuant to Article 62.053 if the youth does not successfully complete treatment.

Currently, TYC adheres to argument 2. If a youth does not complete treatment, TYC will require the youth to register upon release to the community. However, there has been opposition to applying this interpretation since more youth are required to register than would be if a new court order were required as suggested by argument 1. Therefore, we are requesting clarification of the intent from the legislature, through revision of the language of the statute.

Recommendation: Amend Code of Criminal Procedure Articles 62.053 and 62.352 to state under what circumstances TYC is required to register a youth upon release to the community.

Recommendations for Best Practices

TYC has provided the following recommendations relating to best practices:

- Risk-based assessment: Identifying a youth's risk (including sex offending behavior) and protective factors for case management and classification in the CoNEXTions program will greatly improve how youth are classified, assessed and managed as compared to previous methods used.
- Performance-based Standards (PbS) in TYC are the rule. Verifying outcomes achieved are those intended takes subjectivity out of the discussion. For youth with specialized treatment needs (such as sex offender behavior) it is especially important that the agency be able to quantify its delivery and efficacy of treatment and after-care services.
- Multi-Systemic Therapy (MST) is delivered in the natural environment (home, school, community). The treatment plan is designed in close collaboration with the youth and family members. The ultimate goal of MST is to empower families to build relationships that are pro-social through the use of child, family and community resources. MST is a multilevel, multi-component approach to treatment, just without the intense family involvement typical of Functional Family Therapy (FFT). Incorporation of MST is being studied for inclusion in TYC programming for sex offenders.

- All specialized treatment programs are currently being reviewed to assure continuity with the CoNEXTions program. This will be completed in the next six months.
- The CoNEXTions program itself encompasses so many agency functions and programming areas that its effects are expected to revolutionize juvenile justice policy and practices overall. Within TYC, the change from a one-size-fits-all approach with a focus on sanctioning antisocial behavior to an individualized, positive behavior-focused system like CoNEXTions has been dramatic. Improved data management practices, including the PACT component of CoNEXTions will conclusively quantify these effects. Again, data collection and analysis takes time and it cannot be produced upon request at too early a stage and be of any real analytical value.

Sex Offender Treatment Programs

On November 1, an additional dorm (24 beds) at the Giddings State School will be opened for sex offenders. Victim Impact Panels were provided at several facilities to allow youth to participate in them. Case reviews have been conducted on all eligible youth for sex offender treatment. These have been triaged in order to schedule those with the highest need in this area (Level 1) for placement. As youth meet release criteria and leave TYC, these beds are filled with the next tier needing treatment.

Youth identified as priority level two or three are currently getting treatment through the use of adaptations and required supplemental groups. We are in the process of developing what we will call “outpatient” groups and enhancing the required supplemental groups so that we are providing appropriate treatment to those youth.

Additionally, training for our psychologist staff on how to facilitate Psychosexual Education Supplemental Groups was accomplished at Al Price, Giddings, and Ron Jackson. Girls with a high need for specialized sex offender treatment are receiving treatment through individual counseling with a licensed sex offender treatment provider (LSOTP).

In addition to MST, Functional Family Therapy (FFT) is being studied and considered for inclusion in TYC programming. FFT is an empirically grounded, well-documented and highly successful family intervention for at-risk and juvenile justice-involved youth. Youth and their families, whose problems range from acting out to conduct disorders, to chemical dependency can benefit from FFT. These families tend to have limited resources, histories of failure, and a range of diagnoses and exposure to multiple systems. FFT can be provided in a variety of settings, including schools, probation detention centers, residential juvenile correctional facilities, parole and aftercare.

Alternatively, it would be beneficial if funding could be allocated to provide licensed sex offender treatment providers for every campus in order for deferred registration offenders to have a licensed provider evaluate their successful completion of treatment in the CoNEXTions program. Currently, there are over 100 deferred registration sex offenders

in TYC facilities and two (2) more at the Garza County Regional Juvenile Center (a contract secure facility), all of whom will, at some point, return to the community. TYC has two licensed sex offender treatment providers (LSOTPs) or clinicians, who are revising training curriculum and their services to be put in place for these youth while in our institutions.

Additionally, American Correctional Association (ACA) standards and the complimentary PREA (Prison Rape Elimination Act) standards provide safeguards and other requirements designed to anticipate, prevent, and respond to sex offending behavior in our facilities.

TYC Processes for Re-entry of Criminal Offenders into Communities

A TYC youth who has met all criteria for his or her completion of a minimum length of stay (for non-determinate sentenced offenders) or a minimum period of confinement (for determinate sentenced offenders), all programming requirements, and behavioral expectations is processed for release. A packet of information on the youth is prepared by a multi-disciplinary team at the institution and recommendations are made as to the disposition of the youth to be released on TYC parole or to have the length of stay extended. Each case is evaluated separately and on its own merits. The offender's age effects the release decision as does an evaluation of risk to the community should the youth be released.

From the beginning of the youth's stay at TYC, an assigned parole officer has been conducting home visits and evaluating the home to which the youth will eventually return. As the time for the youth to be released nears, the parole officer begins making contacts with service providers the youth will need to access in the community.

The facility then sends the release packet to the TYC Central Office where it is evaluated by the departments in charge of education, treatment, and vocational preparedness. Then the release packet is evaluated by a legal team for compliance with applicable laws. The release packet for determinate sentenced offenders may be sent to the Executive Director for approval. The youth may then be released on TYC parole.

Community Resource Groups (CRCGs) are local interagency groups, comprised of public and private providers who come together to develop individual services plans for children, youth, and adults whose needs can be met only through interagency coordination and cooperation. CRCGs are required by statute and are available in every county. However, CRCGs are unfunded and depend upon the level of interagency cooperation and coordination offered. The CRCGs can make a big difference in the success of TYC youth when they are released into the community.

Barriers to the successful return to law-abiding behavior:

- The majority of youth released from a TYC facility need to complete their education in free-world public schools. There has long been a reticence on the part of school systems to accept TYC youth because of the perceived risk to the other students and faculty. Unfortunately, incidents have occurred which make this view understandable. However, in order to successfully rejoin the community, TYC youth must be given an opportunity to complete their high school education in regular or alternative schools without impediment. TYC employs educational liaison staff in the five major Texas cities to help transitioning youth navigate the “getting back into school” maze.
- Improved interagency cooperation with the Texas Correctional Office for Offenders with Medical and Mental Impairments (TCOOMMI) and the CRCGs notwithstanding, it is still difficult for TYC youth with mental health issues to actually connect with the appropriate treatment and medication sources once released. Even when the services are available, families have difficulty with transportation, cost, and long-term support of a youth’s compliance with treatment regimens. Specialized aftercare providers are located in those areas to which TYC youth are released, and their function is to help connect youth with mental health, chemical dependency, or sexual offending behavior problems in the community.
- Related to the issue above, there is a significant lack of aftercare options in many communities for sex offenders leaving TYC.
- TYC youth face significant barriers in obtaining employment. Some of this is caused by the increasingly easy access the public has to delinquency and/or criminal offense information on TYC youth. Internet disclosure of this information has been reported as has inappropriate release of the information from DPS employees over the phone. Even though this information is usually restricted to the general public, most employers have access to it and are sometimes reticent to give TYC youth the benefit of the doubt as job applicants.
- Transportation issues are a barrier to successful re-entry to the community. Many TYC youth released are either too young or without driver’s licenses and access to a vehicle with which to attend school, therapy, doctor’s appointments, or travel to and from work. Public transportation is sporadically available and usually too complicated to use for the purposes listed above. Added to the mix are the reporting requirements at parole offices which are often located too far away from the TYC youth’s home.
 - TYC metropolitan offices provide bus passes for transportation to and from the District Parole Offices and to community service sites. The Houston District Office provides the new Metro-Q cards to youth for public transportation access. Larger TYC offices have para-professional positions known as a Parole Service Assistant [PSA] that assist officers in providing client services. The PSAs provide transportation to and from community service projects in agency owned vehicles. PSAs also provide

youth and their parent's transportation to Level 1 hearings and other key appointments on a case by case basis if verified transportation problems exist. Officers and PSAs on a case by case basis will transport youth to evening group meetings, to sex offender registration sites, and other locations to accomplish the goals of community transition if verified transportation problems exist. In rural offices such as the Tyler District Parole Office, the parole officer will make arrangements to see youth at their home in lieu of an office visit if the family has verified transportation issues. Youth in adjoining Cherokee County, as a general rule, are not required to travel to Tyler to report. The officer utilizes the Cherokee County Courthouse as an alternative reporting location or meets with the youth at their home or an agreed upon location.

- TYC is working to enhance its relationship with Child Protective Services (CPS) by meeting with CPS staff about their services with the youth and their families. This is a necessary first step in building a coordinated response to this particular barrier. TYC plans to reconnect with CPS through interagency work groups which will have the goal of successful re-entry.
- The return of a TYC youth to his or her family is celebrated joyously by their families, but that joy is too often short-lived. When families once again face the same or similar difficulties with their child, or when law enforcement becomes involved again, youth too often return to TYC as recommitments. This is the most poignant example of the need for programs such as Functional Family Therapy (FFT) and Multi-Systemic Therapy (MST), both of which offer real hope to families in crisis because of delinquent youth behavior. Additionally, outreach activities coordinated by TYC volunteers can be useful in finding appropriate community service projects and through those possible assistance sources, for TYC youth once back at home.
 - Youth who have no home to which they can return can access TYC assistance. Once a youth has completed the requirements of Independent Living Preparation, most commonly while in halfway-house placement, he or she may be eligible for an independent living subsidy for a period of six months based on their compliance with individual case plan objectives. Some of subsidies offered are rent, household items, food, transportation, employment-related clothing, emergency medical care, temporary housing, counseling, college expenses (including room and board), technical school, training and electricity. (Any request for an independent living subsidy or extension beyond six months requires the approval of the administrator of halfway houses and independent living or their designee.)

Concerns from the Office of the Independent Ombudsman

The 4th Quarterly Report from the Office of the Independent Ombudsman (OIO) for the Texas Youth Commission (TYC) contained the following concerns on the operations of TYC:

Alleged Mistreatment Incident System

On August 17, 2008, the OIO sent a memorandum to members of the executive management team in the Texas Youth Commission reporting on the substantial problems with the Alleged Mistreatment System (AMI system). In that report, the OIO expressed concerns that several alleged mistreatment incidents had not been investigated by administrative investigators, the data entry into the database was substantially backlogged, and also that employees had not been disciplined in a timely manner (if at all) when found to have engaged in behaviors which exploited, neglected or abused a youth in the custody of the Texas Youth Commission. Executive management asked for a follow up to the report and the OIO identified 564 cases in which (according to information available to the OIO) investigations had not been completed or may not have been completed according to policy. The OIO turned those cases over to the Inspector General's Office. At this time the Office of the Inspector General is investigating those cases and will determine if investigations into administrative violations were completed as well as determine if all instances of criminal wrongdoing were reported to law enforcement as required. In addition, the AMI report stated that the Youth Rights Division was substantially understaffed.

As a result of the serious nature of the breakdown of the Alleged Mistreatment Incident Report, the OIO reported to the Governor, Lieutenant Governor, State Auditor, Speaker of the House, and other members of the legislature the concerns that the OIO has with the Alleged Mistreatment System. On October 1, 2008, the OIO testified before the Joint Committed on the Operation and Management of the Texas Youth Commission about the report.

Agency leadership convened a meeting on October 7th to collaboratively address the problems identified in the OIO memos and reform efforts will include new policies and procedures for AMI investigations and an enhanced database. Additionally, the Alleged Mistreatment Incident system has been moved under the Office of the Inspector General and will be staffed by trained investigators. The OIG has reported they are adopting a policy and procedure manual and the policies related to the reporting and investigating of alleged mistreatment are being revised at this time. There has been a workgroup which will continue to address the Alleged Mistreatment Incident system which the Ombudsman will be attending along with representatives from the other major divisions of the agency.

Educational Services

On August 25, 2008, the OIO released a report on education services in the Texas Youth Commission. At this time the agency is developing a comprehensive corrective action plan and has already begun undertaking some reform efforts. Agency officials, expert consultant Dr. Michael Krezmien, and the Chief Ombudsman met with Senator Florence Shapiro, Chairwoman of the Senate Education Committee, to discuss legislative solutions to the problems with the education services at TYC that were identified in the report. More discussions are scheduled. The OIO began an assessment of the barriers youth on

TYC parole face when trying to re-enter public schools and have discussed those concerns with the Texas Education Agency and Senator Shapiro's staff.

Medical Services

The OIO has begun conducting specialized site visits focused on health services, and has initiated a regular dialogue with TYC health services leadership. The site visits have illuminated some of the serious problems facing youth who rely on medical services while in TYC. Some of these problems are the direct result of UTMB's current staffing policies. Problems identified range from staffing shortages to some troubling medical practices such as sudden discontinuation of psychiatric medications. Our regular meetings with Health Services leadership have indicated that TYC recognizes many of the problems in the healthcare delivery system and is trying to improve on past practices.

We will be providing the agency with a series of special reports on medical services. The first one was submitted in September and it discusses two health services policies where TYC has solicited and incorporated OIO comments. TYC took the initiative to improve its policy regarding informing parents and legal guardians of their children's medical needs. In addition, it has modified its policies regarding appropriate responses to youth who do not comply with psychiatric medication regimens. The OIO is particularly concerned about taking these youth off medications suddenly as doing so can exacerbate their illness, which often causes them to act out with the result being they are sometimes punished further for what is ultimately their untreated mental health disorder(s).

The first site visit focusing on medical services was to the WINGS contract care program in Marion, Texas. We identified some concerning practices that TYC health services staff responded to promptly upon receiving the OIO's report. The second visit was to the McLennan County State Juvenile Correctional Facility (Mart I) and the findings were more troubling. Those issues were outlined in the first special report on medical services. Some concerns (such as the length of time a youth may spend in intake before being seen by health care staff) are more readily addressed than others, and TYC has indicated it will look more closely at this situation. Other problems may be less easily resolved. For example, the OIO found certain health care professionals, including psychiatrists, who appear to consistently reject certain psychiatric diagnoses and instead consistently diagnose conduct disorders. As detailed in the first special report, this practice is suspect, given the prevalence of mental disorders in this population. By diagnosing a problem as a defect in character, rather than a medical disorder, TYC youth may not receive adequate medical care and are put at risk.

Mental Health Assessments

After a visit to the Mart Orientation and Assessment Unit on July 16, 2008, the OIO sent memorandum to the Treatment and Case Management Department to address concerns with the delays in getting psychological assessments completed for youth newly committed to the TYC. This delay in psychological assessments has caused delays in getting youth placed into appropriate facilities for treatment and in some instances has

caused youth with severe mental health impairments to have delays in stabilization with medication regimens. In addition to the initial assessments being late at the Mart O&A Unit, several forensic psychological assessments at the Giddings facility were determined to be delayed due to staffing shortages. This has a very serious impact as these forensic psychological assessments are required for youth going back to court for possible transfer to the Texas Department of Criminal Justice (TDCJ), or onto parole with the TDCJ parole division. The Treatment and Case Management Division was responsive and made the decision to seek contract services to address the need for the completion of the assessments at both facilities. In late August and early September, another review of the Mart O&A facility was done and it was determined that the assessments continued to be behind due to the shortage of permanent staff. At this time, the OIO is monitoring the situation and attempting to assist the Mart O&A with coming up with solutions that will assist with getting the facility back to within its budgeted population. The Giddings facility's needs have to be addressed in a more permanent manner also, because the forensic psychological examinations require additional expertise in order to be considered valid.

Parole Services

The Office of Independent Ombudsman and the Texas Youth Commission's Family Liaisons held their first collaborative project called "Family Palooza". The OIO/TYC Community Family Focus Forum project was designed to place an emphasis and focus on parents and surrogate parents with children released into the community under the parole supervision of the Texas Youth Commission.

The OIO/TYC objective for this project was to establish a partnership with parents to assist them with accessing community resources in order to improve services for their children. The Family Palooza event allowed for an ongoing exchange of information about the expectations of parole and the barriers youth face when released to the community. TYC and OIO staff provided individualized recommendations and introduced families to TYC and Ombudsman staff, employees with community organizations and provided information about accessible prevention programs.

The first event was held on August 9, 2008, in Dallas County. Sixty families attended. There were also several community organizations represented. Families were provided with TYC/OIO literature in order to provide assistance with locating community resources for the youth as well as to provide phone numbers for various TYC offices and the OIO. Similar forums are currently being planned in San Antonio and Houston.

Allegations of Fiscal Mismanagement by TYC

During the interim of the 80th Legislative Session, continuing examples of fiscal mismanagement by TYC officials led legislators to request a complete audit of TYC's expenditures for Fiscal Year 2008. The co-chairs for the Joint Select Committee on the Operation and Management of the Texas Youth Commission wrote the following letter to State Auditor John Keel in August of 2008:

Dear Mr. Keel:

The Joint Select Committee on the Operation and Management of the Texas Youth Commission request a full audit by the State Auditor's Office of the Fiscal Year 2008 expenditures by the Texas Youth Commission. The Texas Youth Commission is continuing a pattern of, what appears to us, a willful disregard for the spending parameters set by the legislature. TYC was placed into Conservatorship due to gross fiscal mismanagement. We want to ensure that gross fiscal mismanagement is not continuing.

Instead of spending money retaining and attracting new JCO's, TYC has chosen to increase central office personnel. In addition, we have seen evidence that large salary increases are being given to executive staff members. Yet today, our juvenile correctional system sits without a functional classification system or proven treatment and educational programs.

We understand that they are continuing to spend millions of dollars worth of capitol improvements on facilities that were recommended for closure by your office utilizing funds to continue their operations that were not appropriated for that purpose.

We appreciate your efforts in this matter and look forward to cooperating with you in this endeavor.

The call for a state audit of expenditures again arose in October of 2008 when it was discovered that TYC had spent approximately \$1.26 million for an empty facility contracted through a private youth services vendor from Florida. Under intense scrutiny TYC and the vendor ended the contract, but at this time funds have not been accounted for or returned to the state.

Sunset Advisory Commission Staff Report Recommendations

During this interim, the Sunset Advisory Commission conducted a review of the Texas Youth Commission and the Texas Juvenile Probation Commission. The Sunset Staff Report was released in November of 2008. Their recommendations are as follows:

1. Texas juvenile justice agencies, services and funding need major restructuring to ensure an effective continuum of treatment and sanctions for youthful offenders.
 - Abolish TYC and TJPC and transfer their functions to a newly created state agency, the Texas Juvenile Justice Department (TJJD), headed by an 11-member board and with a Sunset date of 2015.
 - Modify state funding for probation services by consolidating funding streams, considering past performance in awarding grants, and

establishing a pilot program to encourage counties to keep lower-risk offenders in their communities.

- Require the new agency to develop a comprehensive five-year Juvenile Justice Improvement Plan, with annual implementation updates, to better integrate state and county juvenile justice functions and to address other critical state-level reforms.

2. The Office of Independent Ombudsman (OIO) and the new Texas Juvenile Justice Department need clearer guidelines to ensure effective interaction.

- Require the new TJJD and the OIO to jointly develop and adopt rules outlining procedures for TJJD to review and comment on OIO's draft reports and to formally respond to OIO's published reports.
- Require TJJD and OIO to adopt a memorandum of understanding outlining how the agencies should communicate in areas of overlapping responsibilities.
- Require that OIO undergo Sunset review during the same time period as TJJD.

3. A small number of nonsecure residential facilities, used exclusively by counties for placing youth on probation, are not licensed or monitored by any state agency.

- Require the new TJJD to regulate all public and private nonsecure correctional facilities that accept only youth on probation.
- Require the new TJJD to establish certification standards for employees who work in nonsecure correctional facilities that accept only youth on probation.
- Require a local juvenile board to annually inspect any nonsecure correctional facility in its jurisdiction used only for youth on probation and certify the facility's suitability with the TJJD.

4. Elements of TJPC's officer certification program do not conform to commonly applied licensing practices.

- Standardize juvenile probation and detention officer certification functions by authorizing continuing education.
- Improve the State's ability to protect youth on probation by authorizing the new TJJD to place certified officers on probation and temporarily suspend officers' certification and by transferring disciplinary hearings to the State Office of Administrative Hearings.

Recommendations

Due to the concerns regarding the lack of implementation of reforms enacted by S.B. 103 and the allegations of continuing fiscal mismanagement, the committee recommends that the legislature pursue a juvenile justice system that will:

- provide rehabilitative services for youth in their communities;
- provide specialized treatment for all youth that require such treatment;
- ensure public safety;
- divert youth from entering the adult corrections system.

INTERIM CHARGE THREE

Study the impact of laws designed to reduce illegal drug use and make recommendations for reducing access to illegal drugs and for developing best practices for preventative programs, focusing on drugs targeted for the younger population, such as cheese heroin. Assess the impact of limiting access to pseudoephedrine, including the impact restrictions have had on illegal manufacturers' methods for producing methamphetamine.

Introduction

In 2005, the Texas Legislature passed legislation to reduce illegal drug use and access to drugs used to manufacture illegal drugs. H.B. 164 required stores to place all products containing pseudoephedrine, ephedrine, and norpseudoephedrine behind the pharmacy counter. In addition, customers are required to provide identification when purchasing these products and may only purchase a limited amount. A log of all sales is kept at the stores dating back two years. This legislation also gave certain state officers the authority to take possession of children that had been permitted to remain on premises used to manufacture methamphetamines.

S.B. 66 created a voluntary program to limit the sale or theft of over-the-counter products containing pseudoephedrine used in the manufacturing process of methamphetamine. It also created a drug-endangered child initiative and the Methamphetamine Watch Program.

Testimony

On July 9, 2008, the Senate Committee on Criminal Justice held a public hearing regarding the impact of this legislation. Mike Maples, Director of Program Service for the Department of State Health Services (DSHS); and Mimi McKay, Legislative Liaison for DSHS, provided the committee with both oral and written testimony regarding these issues (written testimony provided on page 42).

The representatives from DSHS testified that the number of people being treated for methamphetamine abuse has decreased. This decrease in numbers is attributed to past legislation, but also the increase in price of methamphetamine. DSHS is also part of a task force designed to address the issue of cheese, a mixture of heroin and Tylenol PM, in the Dallas area. Prevention was focused on as means to reduce the usage of cheese in the problem areas. DSHS provided the committee with pamphlets giving warnings about the drug. DSHS reported only having one cheese related death in 2007.

Joe Ortiz, the Acting Commander of Department of Public Safety Narcotics Regulatory Programs, testified and provided supplemental documentation to the committee. According to the information provided by Commander Ortiz, the number of methamphetamine labs seized has decreased since the enactment of H.B. 164. Figure 1, provided by DPS, illustrates a significant decrease in the number of domestic labs seized

in the first 12 months after H.B. 164 was enacted. Figure 2, represents the continued decrease of lab seizures.

Figure 1

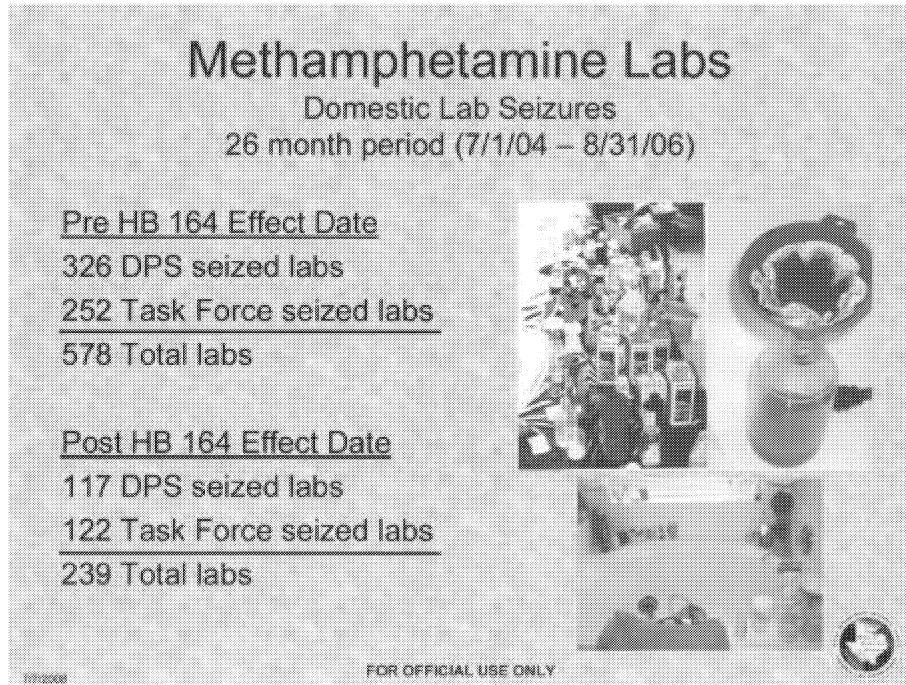
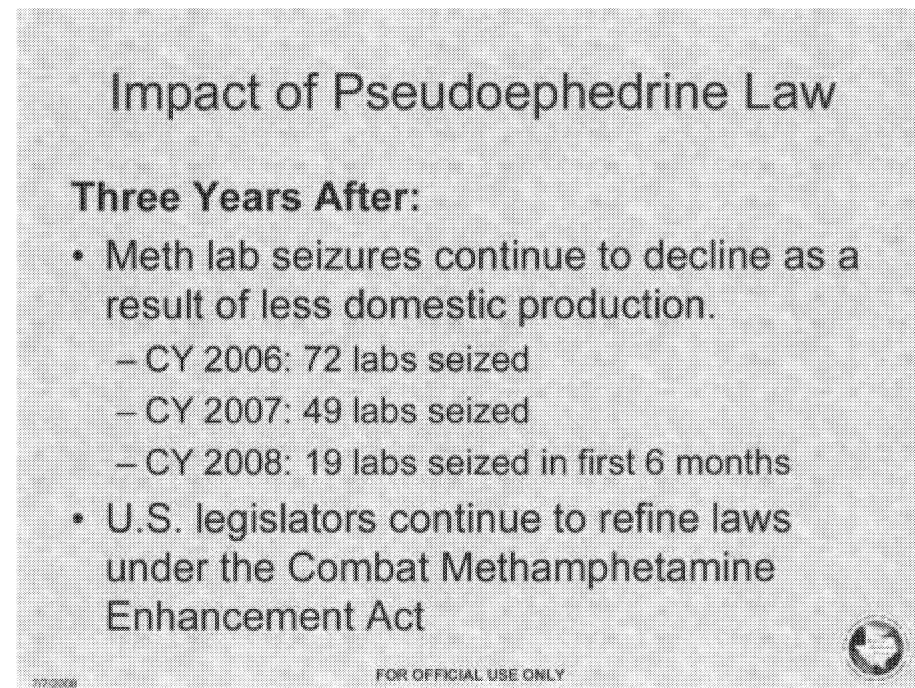


Figure 2



John Kowal of the Houston Police Department testified about the increase in prescription drug abuse. He stated that there has been a significant increase in prescription drug seizures over the past two years. This increase is attributed to the increase in pain management clinics in the Houston area. The Speaker of the Texas House of Representatives has created a special committee dedicated to this topic.

Written Testimony

1. How are DSHS-funded substance abuse services accessed?

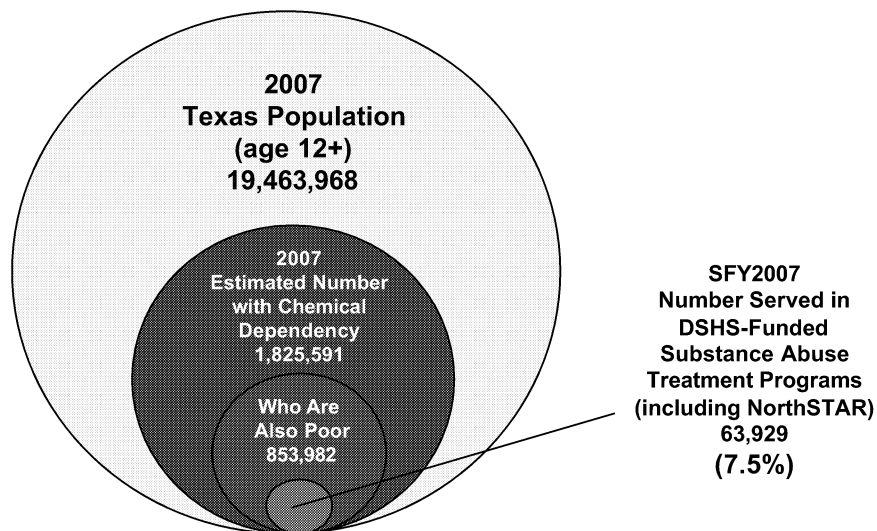
DSHS provides several avenues to the public for learning about and accessing substance abuse treatment services, outlined below:

- **Outreach activities**
 - DSHS Web:
 - Treatment provider search
<http://www.tcada.state.tx.us/treatment/index.shtml>
 - Toll-free number for referral services
(877) 9-NO DRUG (877-966-3784)
 - General information on substance abuse and treatment services
<http://www.dshs.state.tx.us/sa/default.shtm>
 - Partnership for a Drug Free Texas (PDFT)
 - Funded by DSHS
 - Provides materials for statewide distribution promoting the availability of both prevention and treatment services
 - Outreach, Screening, Assessment, and Referral (OSAR)
 - Funded by DSHS
 - Outreach in critical settings
 - Emergency rooms
 - Mental health clinics
 - In conjunction with HIV intervention programs
 - Receive referrals from other agencies or organizations
 - Probation and parole officers for individuals involved in the criminal justice system
 - Department of Family and Protective Services
 - Any other agency workers who come into contact with individuals who are either at risk or active substance abusers
 - Refer individuals needing treatment to appropriate providers
 - OSARs do not directly provide treatment services
- **Accessing treatment**
 - Clients may be admitted by the provider who performed the screening or assessment
 - OSARs are responsible for referring clients to providers
- **Other methods of referral**
 - Individuals seeking treatment on their own
 - Friends or family members seeking treatment information

- As the result of other treatment
 - Emergency medical care
 - Mental health
- Online search
 - DSHS-funded
 - Clickable map to search by region and county for OSARs: <http://www.tcada.state.tx.us/treatment/index.shtml>
 - Toll free treatment hotline: (877) 9-NO DRUG (877-966-3784)
 - List of licensed treatment providers by city
 - List of registered exempt faith-based providers

2. What percentage of the estimated need for substance abuse treatment in Texas is met by DSHS? How is need determined?

Percent of need met in Texas for DSHS-funded substance abuse treatment in SFY2007, adjusting for poverty (200% FPL).



The percentage of need met is the unique number of individuals served divided by the number of persons in need of treatment. The unique number of individuals served is the distinct count of clients served in DSHS-funded substance abuse treatment programs during a year, and the number of persons in need of treatment is the estimated number of persons with a substance abuse problem and in poverty during a year.

The number of individuals in need of treatment is measured by applying the prevalence rates derived from various surveys to the general population in Texas.

Data Sources:

1. The unique number of individuals served: Behavioral Health Integrated Provider System (BHIPS), DSHS.
2. The number of persons in need of treatment: (a) Population projections in Texas, (b) National Survey on Drug Use and Health for Texas, and (c) Texas School Survey of Substance Use.

The FY2007 breakdown of estimated need and percentage of need met for each health and human service region is included in spreadsheet below.

| 2007 Estimated Treatment Need of Substance Abuse and Percentage of Need Met by Region | | | |
|--|-----------------------|------------------------------|-------------------|
| 11 Regions, Texas | Treatment Need | Unique Clients Served | % Need Met |
| 1 (Lubbock) | 46,123 | 3,684 | 8.0% |
| 2 (Abilene) | 23,217 | 1,510 | 6.5% |
| 3 (Dallas) | 175,902 | 17,651 | 10.0% |
| 4 (Tyler) | 20,577 | 2,669 | 13.0% |
| 5 (Beaumont) | 22,203 | 1,870 | 8.4% |
| 6 (Houston) | 221,362 | 12,241 | 5.5% |
| 7 (Austin) | 106,803 | 6,289 | 5.9% |
| 8 (San Antonio) | 90,454 | 8,578 | 9.5% |
| 9 (Mid/Od/SAng) | 19,766 | 1,108 | 5.6% |
| 10 (El Paso) | 32,241 | 3,485 | 10.8% |
| 11 (Corpus Christi) | 95,333 | 4,844 | 5.1% |
| Total | 853,982 | 63,929 | 7.5% |
| <p>[Note]:</p> <ol style="list-style-type: none"> 1. Numbers in need of treatment are defined as those with substance abuse/dependence problems and in poverty. 2. Numbers of unique clients served include ATR clients. <p>[Data Sources]:</p> <ol style="list-style-type: none"> 1. 2007 Population Projections for Texas, Texas State Data Center/Texas Human and Health Services Commission, Oct. 2006 version. 2. 2002-2005 National Survey on Drug Use and Health (NSDUH) for Texas, Office of Applied Studies/SAMHSA, June 2007. 3. 2006 Texas School Survey of Substance Use Among Students in Grades 7-12, DSHS, 2007. 4. "Secondary School Completion and Dropouts in Texas Public Schools 2005-06", Texas Education Agency, August 2007 (Dropout rates were used to adjust the C.D. rates among in-school youths). 5. BHIPS, DSHS. | | | |



Texas Meth Initiatives

Meth Watch Program

- Description:** Meth Watch is a national program that strives to involve retailers in the prevention of methamphetamine production. Through a series of pamphlets, posters and a training video, retailers learn which common household items may be purchased with the intent of producing methamphetamine, and the type of behavior that may be exhibited by consumers who purchase these products with such intent. Participating retailers are provided with signage to alert consumers to their participation in the program. In addition, the Texas program will also deliver an overall prevention message to teens and parents.
- Distribution:** Meth Watch is a targeted program, focusing its efforts in Region 1 (Panhhandle -Amarillo, Lubbock and surrounding counties), 2 (Northwest Texas - Abilene, Wichita Falls and surrounding counties), 3 (North Central Texas - Dallas-Fort Worth and surrounding counties) and 4 (Northeast Texas - Tyler, Texarkana and surrounding counties). Distribution and trainings will be coordinated through the Prevention Resource Center located in each region. Materials will also be available as requested in other areas of the state, based upon available funds.

Public Service Announcements (PSAs)

- Description:** The Department of State Health Services, through the Partnership for a Drug-Free Texas and America, distributes locally tagged PSAs (produced by the national Partnership) throughout Texas. The twice-yearly distributions include personally delivering PSAs to TV and radio groups across 16 media markets and managing the fulfillment and distribution of new creative materials to over 400 radio stations, 600 print publications and 30 cable systems. The Winter 2007 distribution, set to begin in March 2007, includes fourteen English-language methamphetamine messages and eight Spanish-language methamphetamine announcements. The radio distribution includes six methamphetamine announcements. Each year, radio, TV and newspapers donate millions of dollars in free airtime and space.
- Distribution:** Twice yearly, PSAs are distributed statewide. Television stations, select radio groups and newspapers are solicited for support in person. Other radio stations and smaller papers are mailed the announcements.

Texas Meth Alert Video

- Description:** The Department of State Health Services created this eleven-minute video for Texas parents/guardians, administrators, teachers and counselors to highlight the methamphetamine problem in Texas and the role parents can play to keep their teens from using meth. Two former meth addicts, "Ray" and "Christine" give personal accounts of how they started using and abusing methamphetamine. The video seeks to increase the perception of risk associated with meth use, increase anti-drug attitudes, increase awareness among adults of the warning signs of meth use and direct users to the Web site - www.TexasMethAlert.org.
- Distribution:** The video will be provided in the Texas Meth Alert Education Kit and will also be distributed to Texas Police Department School Resource Officers, Prevention Resource Centers and Safe and Drug-Free Schools and Communities Coordinators.

Texas Meth Alert Web Site - www.TexasMethAlert.org

- Description:** The Department of State Health Services is launching a Web site to complement the Texas Meth Alert video by allowing users to watch the video of two recovering Texas addicts as well as directing online users on where to find help, how to order materials and where to find other resources about the effects of meth and treatment options.
- Distribution:** Printed materials associated with the video will alert the public to the Web site. In addition, radio public services announcements will be used to generate interest in the site. Finally, the Texas Meth Alert video will urge viewers to visit the site for more information.

Meth Alert Education Kit

- Description:** The Department of State Health Services is developing an educational kit that will contain a video and discussion guide for youth on the dangers and consequences of meth use; the Texas Meth Alert video for parents/guardians, teachers and counselors on the warning signs of meth use; and posters and fact sheets on different aspects of meth in the community, including the "It's Happy Bunny" meth poster. A unique partnership with A&E Classroom will provide youth-focused custom videos and discussion guides for all Texas high schools. In addition, the www.TexasMethAlert.org Web site will direct Texans to appropriate information and resources as well as allow them to view the video. The materials are designed to increase the perception of risk associated with meth use, anti-drug attitudes, awareness among adults of the warning signs of meth use and to drive people to the Web site — www.TexasMethAlert.org.
- Distribution:** The kits will be distributed to all accredited Texas high schools, Education Service Centers and Prevention Resource Centers.

Lone Star Radio News Network Features

- Description:** The Department of State Health Services created four sixty-second radio news features in English and Spanish. The radio features were developed to educate parents on the dangers and warning signs of methamphetamine use and inform Texans of the growing crisis among teens. The radio news features include phone interviews with experts in meth treatment and law enforcement. The topics include: "What is Meth," "Kids and Meth," "Meth Warning Signs" and "The Meth Lab Next Door."
- Distribution:** The features are distributed via compact disc through the Lone Star Radio News Network, which is comprised of more than 230 English and Spanish-language radio stations. The features reached a cumulative audience of more than six million listeners and generated more than \$200,000 in donated airtime.

Meth360™

- Description:** The Department of State Health Services, through the Partnership for a Drug-Free Texas and America, is participating in a pilot program called Meth360 in the Dallas/Fort Worth area. Designed to educate key advocates on methamphetamine prevention and community mobilization, the program is comprised of a series of presentations, co-delivered by law enforcement, prevention and treatment professionals, to community groups, schools, employers and other organizations. By combining all three aspects — prevention, law enforcement and treatment — the program provides communities with a comprehensive approach to combat meth. Once successfully implemented in Dallas/Fort Worth, the program will be expanded statewide.
- Distribution:** Presentation to key stakeholder groups in DFW Metroplex.

It's Happy Bunny™ Campaign

- Description:** The Department of State Health Services formed a unique and award-winning campaign with nationally acclaimed artist Jim Benton, creator of *It's Happy Bunny™*. The campaign, targeting 10-14 year-olds (with potential broad impact among teens) uses print media (stickers and posters) to leverage the nationally recognized "It's Happy Bunny" counter-culture icon to strengthen protective factors by giving permission to youth to abstain from meth, alcohol and tobacco, and push visitors to www.drugfreebunny.org.
- Distribution:** Posters and stickers are distributed through Prevention Resource Centers to middle schools and through peer networks (PALS program and student governments). Materials are also available through the Web site.

Toll-Free Hotline (877-9-NO DRUG)

- Description:** The Department of State Health Services maintains a 24/7 hotline that serves as a clearing house for several legacy hotlines. Trained operators can assist callers by providing collateral materials; transfers to outreach, screening and referral (OSR) providers; and crisis intervention.
- Distribution:** The toll-free 877-9-NO DRUG hotline is published on all public service announcements and collateral items.

Recommendations

The Texas Legislature has recognized that illegal drug use remains one of the state's most challenging issues. During the last few sessions, legislation has been passed to reduce access to and use of illegal drugs. Some progress has been made in the reduction of access to illegal drugs as a result of past legislation and prevention reforms. It has also been recognized that of the population in need, only a small fraction is actually receiving drug treatment. The following summarizes the list of recommendations the Senate Committee on Criminal Justice makes to the legislature:

1. Continuing to place drugs containing pseudoephedrine, ephedrine, and norpseudoephedrine behind the counters of pharmacies, and continuation of the logging system.
2. Continuation of the Meth Watch Program.
3. Enhancing the capabilities of providing indigent drug treatment.

INTERIM CHARGE FOUR

Monitor the implementation of the new and expanded programs provided to the Texas Department of Criminal Justice (TDCJ) within the Fiscal Year 2008 and 2009 budget, and identify their impact on the criminal justice populations. Study security issues within TDCJ, including staffing issues, use of lock down procedures, the control and containment of infectious diseases and the introduction and control of contraband within the institutions. Review the use of career ladders for employees of TDCJ and issues surrounding the retention of professional corrections staff. Study the issues of independent oversight of TDCJ, including the use and effectiveness of the TDCJ ombudsman system. Provide recommendations for the reduction or elimination of barriers to an effective corrections system.

Introduction

On November 13, 2008, the Senate Committee on Criminal Justice conducted a public hearing to gather information on this interim charge. Invited testimony included a status report from the Legislative Budget Board on the impact of the new and expanded treatment programs and a report from the Texas Department of Criminal Justice on the implementation status of these programs. Public testimony was provided by 16 public members regarding the various matters contained within this charge.

Implementation of New and Expanded Treatment Program within TDCJ

A key focus of the 80th Legislative Session was the funding for the state's criminal justice system, as outlined below, to enhance treatment programs and manage the projected offender population growth over the next several years. The legislature directed additional appropriations totaling over \$227 million for the 2008-09 biennium toward alternatives to constructing additional prison capacity. These targeted FY 2008-09 appropriations total approximately 5,900 additional beds and an additional 2,200 substance abuse treatment slots to the existing institutional capacity.

| <i>GENERAL APPROPRIATIONS ACT</i> | | <i>FY08</i> | <i>FY09</i> |
|---|-------------|-------------|-------------|
| Probation Residential and Treatment Beds | 800 Beds | \$32.3 | \$14.3 |
| Probation Outpatient Sub Abuse Treatment | | \$10.0 | \$5.0 |
| Medically Targeted Substance Abuse Treatment | | \$2.0 | \$1.0 |
| Mental Health - Pre-Trial and Jail Diversions | | \$10.0 | \$5.0 |
| Probation Intermediate Sanction Facility (ISF) Beds | 700 Beds | \$17.1 | \$5.0 |
| Parole ISF Beds | 700 Beds | \$11.7 | \$3.4 |
| In-Prison Therapeutic Community (IPTC) Treatment Slots | 1,000 Slots | \$21.7 | \$9.7 |
| Substance Abuse Felony Punishment (SAFP) Treatment Beds | 1,500 Beds | \$63.1 | \$23.1 |
| Driving While Intoxicated (DWI) Treatment | 500 Beds | \$22.2 | \$8.9 |
| Marlin VA Hospital - TDCJ / CMHC | 200 Beds | \$10.3 | \$0.0 |
| Parole Halfway House Beds | 300 Beds | \$5.6 | \$2.1 |
| Conversion of TYC Facilities (Marlin and San Saba) | 1,200 Beds | \$15.9 | \$3.0 |
| State Jail Substance Abuse Program | 1,200 Slots | \$5.8 | \$2.9 |
| | | \$83.4 | \$144.3 |
| | | \$227.7 | |

The following expansions have been completed or are currently being phased in:

- Probation funding was distributed to the local CSCDs in October 2007 for the additional treatment beds and outpatient substance abuse. (About 670 of the additional probation beds are currently operational.)
- The 1,000-slot expansion to the IPTC program started in October 2007 and is fully operational.
- The 500-bed DWI Treatment facility was under contract in March 2008 and is fully operational.
- 200 additional Halfway House beds were operational in September 2007, with the remaining 100 beds going on-line in FY 2009.
- The State Jail Substance Abuse Program (1,200 treatment slots) began treating offenders in February 2008.

The contracting process is partially complete:

- Of the additional 1,400 probation and parole ISF beds, 224 are under contract and completely phased in. We were able to increase current contracts by 49 beds. (Total Beds: 273)
- Of the additional 1,500 SAFP beds, 588 beds are under contract and completely phased in. We were able to increase current contracts by 88 beds. (Total Beds: 676)
- The remaining SAFP and ISF beds were issued on a second Request for Proposal (RFP). Proposals for beds currently available have been received and are being evaluated and negotiated. For those beds that require construction, proposals are due back November 14, 2008.

Transitional Treatment Centers (TTCs)

Several of the programs identified above include an aftercare component involving TTC placements. Through negotiations with existing vendors the Department has obtained additional TTC beds. In April the Department issued another RFP, which included longer contract terms, reduced insurance requirements, and other modifications intended to encourage vendor interest.

Additionally, TDCJ and DSHS coordinated a plan to allow current contractors to reduce the square footage required per client. Current providers were notified that they may request a waiver from DSHS. The new RFP was modified to inform potential providers of the ability to request a waiver. As of September 2008, current contracts have been increased by 269 beds and contracts for an additional 18 beds are being finalized.

The Department, in cooperation with CSCDs and vendors, is also exploring other options related to TTC placements. These options include a proposal to provide an intensive outpatient treatment model in lieu of residential placement. The outpatient option would provide a level of treatment equal to the current TTC model, absent the requirement that the offender reside at the facility (if a suitable alternative exists). TDCJ is currently

reviewing proposals to pilot this model in Fort Bend (24 offenders participating) and Dallas (planning stages) CSCDs. Additionally, the Parole Division is piloting a residential alternative model in Bexar, Burnet, Harris, Travis, and Williamson counties (21 offenders participating).

- **Total Number of Contracted TTC Beds**

- As of May 2007 - 1,474
- As of August 2007 - 1,525
- As of April 2008 - 1,599 (Serenity contract expired Aug. 2008 – 31 beds)
- As of October 2008 - 1,837 (Excludes 18 beds of contracts being finalized)

Security Issues within TDCJ

As of September 30, 2008, there were 2,975 correctional officer (CO) vacancies. The number of CO vacancies peaked at 3,978 during September 2007. The Department of Criminal Justice uses a combination of overtime and prioritization to fill critical posts, and as necessary will reduce other offender activities such as community service and the agricultural field force.

Agency policy provides for semi-annual lockdowns/shakedowns of all TDCJ correctional facilities, and permits other lockdowns of all or part of a facility for specific cause. On October 20, 2008, the Texas Department of Criminal Justice instituted a system-wide lockdown/shakedown of TDCJ correctional facilities; as of October 27 this system-wide lockdown includes metal detector and pat down searches of all individuals entering and exiting TDCJ units. As of 12:30 PM on Monday, October 27, 2008, with the lockdown and shakedown still in progress, a total of 63 offender cell phones have been confiscated on fourteen facilities. In addition, there have been eleven cell phones confiscated from employees. Other cell phone-related contraband found includes chargers, batteries and SIM cards. Other contraband confiscated includes weapons, tobacco, and marijuana.

The agency currently has 39 walk-through metal detectors located on 22 units, and handheld metal detectors at all facilities. The agency also utilizes canines to detect narcotics and is acquiring canines trained to detect cell phones. TDCJ Fiscal Year 2010 – 2011 Legislative Appropriations Request seeks \$30 million for additional contraband screening and security equipment such as metal detectors and surveillance cameras.

Control and Containment of Infectious Diseases

TDCJ has over 30 policies regarding control of infectious diseases that are compiled into the Correctional Managed Care Infection Control Manual. Several of the policies address specific infectious diseases that are of particular significance in a correctional setting, such as tuberculosis, hepatitis and drug-resistant staphylococcus infection. These policies address both disease management as well as preventing spread of disease. Other policies cover practices aimed at general infectious disease prevention practices, including isolation, hand washing, personal protective attire, medical waste and other topics. The TDCJ Blood-borne Pathogen Exposure Control Plan and policies regarding occupational

exposures are in the Infection Control Manual, as well as policies to prevent disease transmission by offender food handlers and barbers.

Statistics related to infectious diseases as of 9/30/08 are provided below:

Hepatitis B - 1,052
Hepatitis C - 21,435
HIV positive, but not AIDS - 1,656
AIDS - 910

Statistics related to curable diseases reported for Calendar Year 2008, YTD as of 9/30/08, are provided below:

Chlamydia - 30
Gonorrhea - 19
Syphilis - 561
Hepatitis A - 0
Methacillin Resistant Staph - 3,259
Methacillin Sensitive Staph - 1,351
Occupational Exposures (medical staff) - 56
Occupational Exposures (TDCJ staff) - 122
TB skin tests positive at intake - 2,284
TB skin tests positive on annual testing - 420
TB cases (active disease)
 Diagnosed at intake and attributed to county of origin - 6
 Entered TDCJ on TB meds - 9
 Diagnosed during incarceration in TDCJ - 19

Issues of Independent Oversight of TDCJ

The TDCJ Ombudsman Program provides a single point of contact for elected officials and members of the general public who have inquiries regarding the agency, offenders or staff. When necessary, investigations shall be coordinated through appropriate TDCJ officials. The TDCJ Ombudsman Offices strive to provide timely responses to the public.

- Ombudsman Offices respond to issues concerning offenders incarcerated in secure TDCJ facilities, and those under probation/parole supervision.
- Ombudsman Offices do not respond directly to incarcerated offenders or TDCJ employees as each of these entities have their own grievance processes.

Processing Ombudsman Inquiries

- All inquiries received are logged into the Ombudsman Case Tracking System (OCTS)
- Written acknowledgement of receipt is immediately sent to requestor.

- Inquiry is responded to, or forwarded to proponent for investigation and/or draft response.
- Final response is mailed to requestor.
- Inquiry is logged into the OCTS as completed.
- Time constraints for responses:
 - Emergency/Priority (Life Endangerment)/Specialty issues – Investigation initiated immediately upon receipt, and final response sent as soon as investigation is completed.
 - Legislative Inquiries – Final response within 10 workdays of receipt.
 - General Public Inquiries – Final response within 30 workdays of receipt.
- During Fiscal Year 2008, TDCJ Ombudsman Offices responded to 18,857 inquiries (mail = 4,355; telephone = 6,214; internet = 8,285; and other = 3).

Procedures for Processing Emergency/Priority/Life Endangerment Issues

Procedures include allegations of threats and/or physical harm from another offender; requests for protection; allegations of threats and/or physical harm from staff; allegations of sexual assault; and medical emergencies.

If inquiry is received via telephone, detailed information is obtained and requestor is advised investigation will begin immediately. Unit is contacted immediately and request is made for an Offender Protection Investigation (OPI).

If written inquiry is received (via mail or Internet e-mail), copy of inquiry is faxed immediately to unit warden requesting an OPI be conducted within 72-hour time frame required by Safe Prisons Plan, and a copy of the completed investigation is to be provided to Ombudsman Office as soon as possible.

If an allegation involves sexual assault, the Office of Inspector General (OIG) is also contacted. If an investigation has already been opened, a case number is obtained and a copy of the correspondence is faxed to that office to be included with investigation materials. If an investigation has not been opened, a copy of the correspondence is faxed and a request is made that the Ombudsman Office be advised if/when an investigation is opened.

- When result of OPI are received from the unit, and determination has been made whether an OIG investigation has been conducted, a written response is provided to the requestor, informing them of the outcome of the unit investigation, and if applicable, the OIG case number and contact information for OIG.
- If inquiry includes claims of injury or mental health issues as a result of alleged assault, information is also faxed to TDCJ Health Services Division for review and response on medical issues. If requestor claims assault resulted in life-threatening injuries or a mental health crisis (suicidal ideations), allegations are faxed to the Health Services Division as well as the unit warden, in order to deal with the possible medical emergency.

It should also be noted that pursuant to H.B. 1944, 80th Legislature, the Texas Board of Criminal Justice has appointed an ombudsperson to coordinate the department's efforts to eliminate the occurrence of sexual assault in correctional facilities. The sexual assault ombudsperson is separate from the TDCJ ombudsman office and reports directly to the board. The ombudsman is currently developing procedures for the operation of the office and monitoring the agency's policies for the prevention of sexual assault in correctional facilities.

Correctional Officer Recruitment and Retention

TDCJ continues to develop and implement initiatives that focus on recruiting and retaining these critical positions. Recent initiatives relating to correctional officer recruitment and retention include:

- Changes to the correctional officer (CO) career ladder in November 2007 provided an accelerated career path for former correctional staff returning to the agency within 36 months, and a higher starting salary rate for correctional applicants with two years active military service or a Bachelor's degree.
- In order to address targeted staffing shortages, effective April 2008, a \$1,500 recruitment bonus is provided to newly hired correctional officers on units that have been critically understaffed. Generally, there have been about 20 units staffed below 80 percent each month. Units are reevaluated periodically to determine bonus eligibility.
- Effective May 2008, the starting salary of a newly hired correctional officer was increased by 10%, to \$25,416. After the first two months of employment, the correctional officer would advance to \$26,940. After 6 months as a Correctional Officer II, the correctional officer would advance to \$28,546, currently the second CO III pay level. (By eliminating the first CO III pay level, this reduced the months of service required to reach the maximum salary by six months for all correctional staff.) Note that correctional staff includes Laundry and Food Service Managers who are on a similar correctional career ladder.

| PREVIOUS | | | | |
|----------------------|-------|----------------|------------------------------|----------------------------|
| Position Title | # | FY 2008 Salary | Career Ladder (in Months) | Length of Salary Increment |
| Correctional Off I | 678 | \$ 23,046 | 0 – 2 | 2 months |
| Correctional Off II | 1,775 | \$ 24,900 | 3 – 8 | 6 months |
| Correctional Off III | 1,194 | \$ 27,001 | 9 – 14 | 6 months |
| Correctional Off III | 1,180 | \$ 28,546 | 15 – 20 | 6 months |
| Correctional Off III | 2,536 | \$ 30,202 | 21 – 36 | 16 months |
| Correctional Off IV | 1,431 | \$ 31,076 | 37 – 48 | 12 months |
| Correctional Off IV | 1,243 | \$ 31,972 | 49 – 60 | 12 months |
| Correctional Off IV | 3,227 | \$ 32,936 | 61 – 96 | 36 months |
| Correctional Off V | 9,537 | \$ 33,946 | 97 + | |

| CURRENT | | | | |
|----------------------|----------------|----------------|---------------------------|----------------------------|
| Position Title | FY 2008 Salary | FY 2009 Salary | Career Ladder (in Months) | Length of Salary Increment |
| Correctional Off I | \$ 25,416 | \$ 26,016 | 0 – 2 | 2 months |
| Correctional Off II | \$ 26,940 | \$ 27,540 | 3 – 8 | 6 months |
| Correctional Off III | \$ 28,546 | \$ 29,146 | 9 – 14 | 6 months |
| Correctional Off III | \$ 30,202 | \$ 30,806 | 15 – 30 | 16 months |
| Correctional Off IV | \$ 31,076 | \$ 31,698 | 31 – 42 | 12 months |
| Correctional Off IV | \$ 31,972 | \$ 32,611 | 43 – 54 | 12 months |
| Correctional Off IV | \$ 32,936 | \$ 33,595 | 55 – 90 | 36 months |
| Correctional Off V | \$ 33,946 | \$ 34,624 | 91 + | |

A request for a substantial and comprehensive correctional officer and parole officer salary increase is presented in our Legislative Appropriations Request for Fiscal Years 2010-2011.

A 20% average pay increase for these positions will raise the starting salary of a correctional officer from \$26,016 to \$30,179, with the maximum salary after 7 ½ years increasing from \$34,624 to \$42,242. The parole officers would receive comparable increases, with the starting salary increasing from \$32,277 to \$37,441, with a maximum salary after 10 years increasing from \$36,363 to \$43,636. Ranking correctional officers and parole officers, as well as Correctional Laundry and Food Service Managers, would also receive similar salary increases. (See tables on the next page for more details)

Additionally, TDCJ recently began utilizing recruitment bonuses for newly hired correctional officers willing to work at a critically staffed unit. We are seeking funding and legislative authority to expand this initiative to include annual retention bonuses for those employees currently assigned at critically staffed units as well as correctional officers willing to transfer to those designated units.

Correctional Officers & Ranking Staff

| TITLE | Pay Group | FY09 Current Salary | Proposed Salary | Total Service |
|--------------------------|-----------|---------------------|-----------------|----------------------|
| Correctional Officer I | A07 | \$ 26,016 | \$ 30,179 | 0 - 2 m 2 months |
| Correctional Officer II | A09 | \$ 27,540 | \$ 31,946 | 3 - 8 m 8 months |
| Correctional Officer III | A11 | \$ 29,146 | \$ 33,809 | 9 - 14 m 6 months |
| Correctional Officer III | A12 | \$ 30,806 | \$ 35,735 | 15 - 30 m 1 year |
| Correctional Officer IV | A12 | \$ 31,698 | \$ 38,038 | 31 - 42 m 1 year |
| Correctional Officer IV | A12 | \$ 32,611 | \$ 39,133 | 43 - 54 m 1 year |
| Correctional Officer IV | A12 | \$ 33,595 | \$ 40,314 | 55 - 90 m 3 years |
| Correctional Officer V | A14 | \$ 34,624 | \$ 42,242 | 91+ |
| Sergeant | B07 | \$ 35,815 | \$ 45,114 | |
| Lieutenant | B08 | \$ 37,045 | \$ 48,182 | |
| Captain | B09 | \$ 38,315 | \$ 51,458 | |
| Major | B10 | \$ 41,084 | \$ 54,957 | |
| Assistant Warden | B14 | \$ 50,488 | \$ 64,850 | |
| Warden I Avg | B16 | \$ 60,813 | \$ 76,523 | |
| Warden II | B18 | \$ 71,125 | \$ 83,410 | |

Parole Officers

| TITLE | Pay Group | FY09 Current Salary | Proposed Salary | Total Service |
|--------------------------|-----------|------------------------|------------------------|---------------------|
| Parole Officer I Range | B06 | \$ 32,277 \$ 32,470 | \$ 37,441 \$ 37,802 | 0 - 24 m 2 years |
| Parole Officer II Range | B07 | \$ 34,210 \$ 36,363 | \$ 41,052 \$ 43,636 | 24 + |
| Parole Officer III Range | B08 | \$ 36,363 \$ 41,084 | \$ 43,636 \$ 49,301 | |
| Parole Officer IV Range | B10 | \$ 41,084 \$ 46,473 | \$ 49,301 \$ 55,768 | |
| Parole Officer V Range | B12 | \$ 46,473 \$ 51,863 | \$ 55,768 \$ 62,236 | |

Correctional Laundry & Food Service Managers

| TITLE | Pay Group | FY09 Current Salary | Proposed Salary | Total Service |
|--------------------------|-----------|---------------------|-----------------|-----------------------|
| Food Service Manager III | A14 | \$ 30,806 | \$ 35,735 | 0 - 30 m 2.5 years |
| Food Service Manager III | A14 | \$ 31,698 | \$ 38,038 | 31 - 42 m 1 year |
| Food Service Manager III | A14 | \$ 32,611 | \$ 39,133 | 43 - 54 m 1 year |
| Food Service Manager III | A14 | \$ 33,595 | \$ 40,314 | 55 - 90 m 3 years |
| Food Service Manager III | A14 | \$ 34,624 | \$ 42,242 | 91+ |
| Food Service Manager IV | A16 | \$ 37,955 | \$ 50,973 | |
| Laundry Manager III | A14 | \$ 30,806 | \$ 35,735 | 0 - 30 m 2.5 years |
| Laundry Manager III | A14 | \$ 31,698 | \$ 38,038 | 31 - 42 m 1 year |
| Laundry Manager III | A14 | \$ 32,611 | \$ 39,133 | 43 - 54 m 1 year |
| Laundry Manager III | A14 | \$ 33,595 | \$ 40,314 | 55 - 90 m 3 years |
| Laundry Manager III | A14 | \$ 34,624 | \$ 42,242 | 91+ |
| Laundry Manager IV | A16 | \$ 35,694 | \$ 44,975 | |

Contraband within Texas Prisons

Major security breaches within TDCJ and the presence of cell phones within the Death Row housing of the Polunsky Unit resulted in an emergency meeting of the Senate Committee on Criminal Justice on October 21, 2008. Following the public hearing, Senator Whitmire sent a letter to Oliver Bell, Chairman of the Texas Board of Criminal Justice, and Brad Livingston, Executive Director of the Texas Department of Criminal Justice:

After Tuesday's hearing concerning the overwhelming amount of contraband in our prisons, I am convinced that an urgent, sustained response is required to implement zero tolerance on contraband. The prevalence of contraband is well documented and has been widely publicized including:

- May 2008 media report alleging that corrupt officer was taking over a prison
- May 2008 KPRC report of charges of prison corruption
- May 2008 media reports of prison warden removed for corruption
- May 2008 media reports of the Terrell Unit lockdown over contraband issues
- May 2008 TDCJ commitment to investigate roadside clash with KPRC news crew
- May 2008 TDCJ termination of prison captain due to corruption
- June 2008 Criminal Justice Legislative Oversight Committee hearing on prison corruption

I will not even attempt to list the media coverage prior to or after the hearing held October 21, 2008, along with the Governor's order for a statewide lockdown of the entire prison system to search for contraband. I am totally convinced that unless the following improvements are immediately implemented, significant safeguards will not be in place:

- A complete search of all individuals entering a prison to include the use of electronic metal detectors (only 22 units out of 112 have these machines), searching of property and pat down searches, monitored by law enforcement and ranking prison officials
- Cell phone jamming blockers and monitoring systems
- Increased and constant use of drug detection dogs or systems
- Rewards for inmates and correctional officers reporting contraband violations
- Vigorous prosecution of alleged violators and strong punishment
- Maximized use of surveillance cameras with the capability to digital record the video and audio. Equipment must be in all areas of each unit (TDCJ has 5000 old cameras among 112 unit, many not operative, while TYC with 14 units has 8000 new digital cameras with recording capability)

- Long term movements to professionalize the correctional officer positions and their supervisors, with increased compensation and higher entry standards

It is imperative that Mr. Livingston advise Mr. Bell, the Legislature and the State leadership, in a very detailed, accurate and urgent manor, of the resources required to correct the observed and documented dysfunctions within TDCJ operations.

I understand the challenges of operating the second largest prison system in our nation, but we must respond to these challenges with a sense of urgency and have the will to conquer and overcome the barriers in front of us. The citizens of Texas desire no less than our maximum efforts and will not settle for less than significant, sustained, and successful actions.

Recommendations

Testimony before this committee revealed that the new and expanded treatment programs provided by the 80th Legislature are having the desired impact and are stabilizing the projected growth of our prison system. However major problems exist within TDCJ, mostly resolving around and created by the critical staff shortage that continues to plague this system. This committee recommends that the legislature during the 81st Legislative Session support appropriations to:

1. Continue the appropriations for the new and expanded treatment programs and provide funds to complete the total proposed package of programs. Maintain the appropriations for those implemented in Fiscal Year 2008 and 2009. Utilize state prison property to establish halfway houses and transitional treatment facilities, removing offenders from hard beds and relieving the backlog of those awaiting these services.
2. Support the appropriations for significant pay increases contained in the TDCJ LAR. Achieving full staff at all state facilities should be a primary objective for a safe and effective prison system.
3. Mandate the enhanced security procedures contained in Senator Whitmire's letter to Chairman Bell and Brad Livingston, along with supporting the funding to implement these measures within the standard operating procedures.
4. Reorganize the TDCJ ombudsman staff into an office under the Texas Board of Criminal Justice or move into a state-wide independent ombudsman agency.

INTERIM CHARGE FIVE

Study and make recommendations for reducing the number of law enforcement officer deaths in the line of duty. This study should include:

- an assessment of the types of calls and assignments that put law enforcement officers most at risk;
- the geographic regions of the state that suffer the most deaths;
- the agencies experiencing the highest rate of deaths in the line of duty;
- the time in an officer's career, and the officer's age that he or she is most susceptible to death in the line of duty; and
- the times of year, month, and day that is most dangerous.

Law Enforcement Officers Killed in 2007

According to preliminary statistics released by the Federal Bureau of Investigation (FBI) in May of 2008, 57 law enforcement officers were feloniously killed in the line of duty during 2007.⁴ Geographically, 31 of the officers were killed in the South, 9 in the West, 9 in the Midwest, and 7 in the Northeast. One officer was slain in Puerto Rico. **All together, 9 more officers were killed in 2007 than in 2006.**

By circumstance, 16 deaths occurred as a result of ambush situations, 16 died during arrest situations, 11 were killed while handling traffic pursuits/stops, 6 died responding to disturbance calls, 3 while investigating suspicious persons/circumstances, 3 during tactical situations, 1 while conducting investigative activities, and 1 while handling and transporting prisoners.

A breakdown of weapons used in these slayings reveals that firearms were used in the majority of incidents. Of the 55 officers killed with firearms, 38 were killed with handguns, 9 with shotguns, and 8 with rifles. Two officers were killed with vehicles.

At the time they were killed, 35 law enforcement officers were wearing body armor. Eleven officers fired their weapons and 14 attempted to fire their weapons. Four officers had their weapons stolen and 2 officers were slain with their own weapons.

The 57 law enforcement officer deaths occurred in 51 separate incidents in 2007. Fifty of the 51 incidents have been cleared by arrest or exceptional means.

Law Enforcement Officers Killed and Assaulted, 2006

The FBI provides information about duly sworn city, university and college, county, state, tribal and federal law enforcement officers who were feloniously killed in the line

⁴ U.S. Department of Justice, Federal Bureau of Investigation, *FBI Releases Preliminary Statistics for Law Enforcement Officers Killed in 2007*, (May 12, 2008).

of duty during 2006 and who met certain other criteria.⁵

Overview

- In 2006, 48 law enforcement officers were feloniously killed as a result of 47 separate incidents.
- 22 of the 48 officers feloniously killed were employed by city police departments. Of these, 8 were members of law enforcement agencies in cities with a population of 250,000 or more.
- Line-of-duty deaths occurred in 25 states, the District of Columbia, and Puerto Rico. The state with the most felonious officer deaths was California, where 6 officers died in 2006.
- In the 10-year span of 1997 through 2006, 562 officers were feloniously killed in the line of duty.

Victim Profile

- 38 years old—the average age of the officers who died from felonious attacks.
- 11 years—the slain officers' average length of law enforcement service.
- 45 of the officers killed were male.
- 38 of the officers were white; 5 were black; 1 was Asian/Pacific Islander; 1 was an American Indian/Alaskan Native. The race of 3 officers was not reported.

Circumstances

- 12 officers died in 2006 as a result of felonious attacks during an arrest.
- 10 officers were fatally assaulted when ambushed.
- 8 officers were killed while responding to disturbance calls (e.g., bar fights, family quarrels), and 8 officers were killed during traffic pursuits or stops.

Assignments

- 27 of the victim officers who died in the line of duty in 2006 were on assigned vehicle patrol.
- 3 of the officers fatally attacked were off duty but acting in an official capacity.
- 18 of the slain officers were assigned to other duties (e.g., special assignments, undercover) at the time of the incidents.
- 27 of the officers killed were assisted at the time of the attack.

Weapons

- 46 of the 48 officers who died from felonious attacks in 2006 were murdered with firearms. Of these, 36 were slain with handguns.

⁵ U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement Officers Killed and Assaulted, 2006* (October 2007).

- 2 officers were killed with vehicles that were used as weapons.
- 11 officers fired their own weapons during the incidents that led to their deaths; an additional 7 officers attempted to use their own weapons.
- 32 incidents involving firearms occurred when the distance between the offender and the victim was 10 feet or less. Of these, 24 officers were 5 feet or less from their attackers when shot.

Body armor

- 26 of the 46 officers killed with firearms were wearing body armor when they were fatally wounded.
- Of the 26 officers who were wearing body armor:
 - 15 officers suffered fatal gunshot wounds to the head.
 - 7 officers were mortally wounded after receiving shots to the torso.
 - 4 officers succumbed to gunshot wounds to the neck/throat.

Regional and outlying area breakdowns

- Of the 48 officers who died in 2006 as a result of felonious attacks:
 - 22 officers were employed in the South.
 - 11 officers were employed in the West.
 - 7 officers were employed in the Northeast.
 - 6 officers were employed in the Midwest.
 - 2 officers were employed in Puerto Rico.

Months, days, and times of incidents

- More officers (7) died in August from felonious attacks than in any other month of 2006. During February, May, and October, 6 officers were feloniously killed in each month.
- In 2006, three days of the week (Monday, Wednesday, and Thursday) had the highest number of incidents that resulted in the deaths of officers with 11 occurring on each day (for a total of 33).
- The fewest number of officers (2) died from felonious assaults that occurred on Sunday.
- More officers (7) were fatally injured in assaults that happened from 10:01 p.m. to midnight than during any other 2-hour time period.

Profile of alleged known assailants

- In 2006, 55 alleged offenders were identified. Of those offenders, the following characteristics are known:
 - 29 years old—the average age of the alleged offenders.
 - 5 feet 10 inches/176 pounds—the average height and weight of the alleged offenders.

- 54 of the alleged assailants were male.
- 29 of the alleged offenders were black; 25 were white.
- Of the alleged assailants identified, 42 had previous criminal arrests, including 11 who had been arrested for assaulting an officer or resisting arrest.
- 15 of the 55 alleged offenders were under judicial supervision (e.g., probation, parole) at the time of the fatal incident.

FBI Report on Law Enforcement Officers Accidentally Killed in 2006

The FBI provides information regarding accidental line-of-duty deaths of duly sworn city, university and college, county, state, tribal, and federal law enforcement officers, who met the same criteria as officers feloniously killed.

Overview

- 66 law enforcement officers died as the result of accidents that occurred in the line of duty.
- 61 law enforcement agencies in 29 states and Puerto Rico reported that officers from their jurisdictions died as the result of accidents.
- Most of the officers (24) accidentally killed in 2006 were employed by city police departments.

Victim Profile

- 36 years old—the average age of officers accidentally killed in 2006.
- 10 years—the average length of law enforcement service.
- 64 of the officers accidentally killed were male.
- 59 of the officers accidentally killed were white, 4 were black, and 3 were Asian/Pacific Islander.

Circumstances

- 38 officers died in 2006 as a result of automobile accidents.
- 13 officers were struck and killed by vehicles; 9 of these victim officers were directing traffic/assisting motorists, etc., and 4 were performing traffic stops, instituting roadblocks, etc.
- 8 officers died of injuries sustained in motorcycle accidents.
- 4 officers died as a result of accidental shootings (crossfires, training sessions, cleaning mishaps, etc.)

Regional and outlying area breakdowns

Of the 66 officers who were accidentally killed in the line of duty in 2006:

- 26 were employed by law enforcement agencies in the South.
- 20 were employed by agencies in the West.

- 14 were employed by agencies in the Midwest.
- 5 were employed by agencies in the Northeast.
- 1 was employed by an agency in Puerto Rico.

Months of incidents

- In 2006, the greatest number of deaths resulting from accidents (8 in each month) occurred in the months of August and November.
- The fewest officer deaths (3) resulting from accidents occurred in June.

Days of incidents

- More officers (14) were involved in fatal accidents that occurred on Friday than on any other day of the week.
- The fewest accidents resulting in officer fatalities (4) occurred on Monday.

Times of incidents

- More officers (40) were fatally injured in accidents that occurred between the hours of 12:01 p.m. and midnight.
- 26 officers lost their lives from accidents that happened between the hours of 12:01 a.m. and noon.

Texas Commission on Law Enforcement Officer Standards and Education Study

The Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) is the custodian of peace officer records for Texas. As such, TCLEOSE receives notification of peace officer line-of-duty deaths as reported by law enforcement agencies within the state. Additionally, TCLEOSE is responsible for verifying eligibility and enrollment of Texas peace officers killed in the line of duty for the Texas Peace Officer Memorial. These responsibilities give TCLEOSE access to information on line of duty deaths and the circumstances surrounding those deaths.

In a study of Texas peace officer line-of-duty deaths, TCLEOSE chose to follow the statistical methods used in Uniform Crime Reports and published in the FBI Law Enforcement Officers Killed and Assaulted. The National Law Enforcement Memorial also publishes statistics. Their data includes other categories, which are not applicable for this in-state study, such as federal officers and corrections officers. Most line of duty death data is reported in two distinct categories. The categories are officers accidentally killed and officers killed feloniously. TCLEOSE compared the death rates of Texas peace officers to the national data.

| United States Officer in the Line of Duty Deaths | | | | | |
|---|-------|--------------------|------------------|---------------------|------------------|
| Year | Total | Feloniously Killed | Percent of Total | Accidentally Killed | Percent of Total |
| 2005 | 122 | 55 | 45% | 67 | 55% |
| 2006 | 114 | 48 | 42% | 66 | 58% |
| 2007 | 140 | 57 | 41% | 83 | 59% |
| Total | 376 | 160 | 43% | 216 | 57% |

| State of Texas Officer in the Line of Duty Deaths | | | | | |
|--|-------|--------------------|------------------|---------------------|------------------|
| Year | Total | Feloniously Killed | Percent of Total | Accidentally Killed | Percent of Total |
| 2005 | 13 | 4 | 31% | 9 | 69% |
| 2006 | 8 | 4 | 50% | 4 | 50% |
| 2007 | 20 | 10 | 50% | 10 | 50% |
| Total | 41 | 18 | 44% | 23 | 56% |

Accidentally Killed in the Line of Duty

This category includes all non-felonious deaths. Included in the category are vehicle accidents, traffic stop accidents, drownings, and training accidents.

All data being quoted, is reported by calendar year. This analysis was limited to calendar years 2005, 2006, and 2007.

| Accidentally Killed in the Line of Duty | | |
|--|-----------------------------|-------|
| Year | United States & Puerto Rico | Texas |
| 2005 | 67 | 9 |
| 2006 | 66 | 4 |
| 2007 | 83 | 10 |
| Total | 216 | 23 |

Circumstances of the Accident

In the United States from 2005 through 2007, 146 of the 216 officers (68%) were killed in automobile accidents, 38 of the 216 (17.6%) were struck by a vehicle while outside their vehicles and the remaining 32 officers were killed in various accidents including, but not limited to, drownings and training exercise accidents.

By comparison, in Texas, 15 of 23 officers (65%) were killed in automobile accidents and 2 of the 23 (8.6%) were struck by a vehicle while outside their vehicles. Two drowning deaths were reported between 2005 and 2007 and 3 accidental deaths occurred while training.

Victim Profile

Nationally, officers killed in accidents averaged 36+ years of age with 10+ years of law enforcement service. In Texas, officers killed in accidents averaged 37.6 years of age and 9 years of law enforcement service.

Of the 23 officers killed in accidents in Texas during 2005, 2006, and 2007, only the Department of Public Safety lost more than 1 officer. Three Department of Public Safety Troopers died during this three year period in three separate accidents.

Analysis of the Texas data does not appear to show any correlation by region. Fridays and Saturdays in the late evening or early morning hours are the most dangerous days of the week and times of the day. In Texas, neither the month nor the season have any correlation to accidental death. Education and certification levels do not correlate to this accidental death data.

Officers Feloniously Killed in the Line of Duty

A three calendar year picture of felonious deaths:

| Feloniously Killed in the Line of Duty | | | |
|---|--|--------------|---|
| Year | United States & Puerto Rico | Texas | Texas as a percentage of National Data |
| 2005 | 55 | 4 | 7.3% |
| 2006 | 48 | 4 | 8.3% |
| 2007 | 57 | 10 | 17.5% |
| Total | 160 | 18 | 11.2% |

Circumstance of the Incident

Nationally, 160 officers were feloniously killed in 151 separate incidents. The majority were killed by an assailant who was within 10 feet of the officer. Thirty-four were killed by ambush. Domestic disturbance and arrest situations continue to be the most dangerous for officers, followed by traffic pursuits ending in an assault by firearm.

In Texas, 3 of the 18 officers feloniously killed in the line of the duty were shot in an ambush, 4 were shot during traffic pursuits, 6 were shot responding to domestic disputes, and 2 were shot during arrest situations. The Texas data mirrors the national data with respect to the officers' distance from assailant in shooting incidents.

Victim Profile

Nationally, the average peace officer feloniously killed was 37+ years old with 10+ years of experience. This is essentially the same age and seniority as the national data for officer accidentally killed in the line of duty. Most are assigned patrol duties and less

than 10% were off-duty at the time of the incident. Firearms were used in 151 of the 160 deaths.

In Texas, the average age of peace officer feloniously killed is 38.7 years of age with 10.9 years of law enforcement experience. This mirrors the national data. Houston has lost 2 officers in two separate felonious killings during 2005-2007. Henderson County Sheriff's Department lost 2 officers in one incident, and Odessa Police Department lost 3 officers in a single domestic disturbance response and shooting.

The only recognizable trend is that most large cities in Texas have experienced at least 1 felonious killing of a peace officer in the last three years. Small rural jurisdictions, however, are not immune from this tragedy.

The victim officers cross all educational and certification levels without any distinct correlations. Again Fridays and Saturdays, in the late evening or early morning hours, are the most dangerous. All months are represented and one month is no more dangerous than others. Nearly all of the 19 victim officers were in patrol assignments. Rifles and shotguns were used in Texas more frequently than nationwide. Handguns were the overwhelming weapon of choice.

Profiles of the Alleged Assailant

Nationally the average offender is a thirty year old male, with over 80% having previous criminal records. Many have been previously arrested for violent crimes, including assault on a peace officer.

The Texas data concerning assailants is not complete. The available data, however, mirrors the national data.

Summary

Texas data on both accidental and felonious line-of-duty deaths mirrors the national data detailed by the FBI in its yearly report. There does not appear to be any discernible patterns or trends. **Policing remains a dangerous profession and our delivery method of this public service by automobile is the largest contributor to accidental deaths in Texas and across the nation.**

Recommendations

The public hearing conducted on this grave matter reveals that Texas police confront a variety of many dangerous duties and assignments, facing both known—and more often unknown—life threatening situations. The Texas Legislature has recognized this and, over the last several sessions, has enhanced the penalties for assaulting and/or murdering a police officer and their service animals. It has also mandated that traffic slow down and move over when law enforcement and emergency vehicles have their emergency lights on. Moreover, it has provided state law enforcement agencies with additional

compensation, along with a state-of-the-art drivers training course for Troopers in the Department of Public Safety.

Among the incidents noted in the various reports, the increasing accidental deaths involving vehicle collisions are most disturbing, as they account for 56% of Texas officer deaths during the last three years. Factors such as the number of hours an officer had worked, involvement of overtime, and the condition and quality of the vehicles utilized remain undeveloped during this review. During the upcoming legislative session these factors should be included in preparing budgetary matters to ensure that the best practices are implemented in order to minimize these dangers and allow for the safe patrolling of our streets and highways.

INTERIM CHARGE SIX

Study the issue of criminal asset seizure and the use of seized and forfeiture funds by district attorneys and law enforcement agencies. Review the oversight of these matters by the Texas Attorney General and provide recommendations to improve the dissemination of information concerning these funds. Ensure that these funds have the appropriate accountability and fiscal controls required for public funds.

Background

Asset forfeiture was first implemented by the legislature as a crime fighting tool by removing the proceeds and instrumentalities relied upon by criminals used to perpetuate criminal activity and using it to prosecute those offenders and protect the community.⁶

Prior to 1989, seizures and forfeiture laws were limited to criminal activities as listed by the Texas Controlled Substances Act and driving while intoxicated statutes.⁷ Any property was subject to forfeiture if it was tied to a violation of that Act; however, the law did not permit the seizure and forfeiture of real property.⁸

In 1989, Representative Dan Morales introduced House Bill 65 which passed during the 71st Legislative First Special Session and codified as Chapter 59 of the Texas Code of Criminal Procedure.⁹ The original purpose of Chapter 59 was to expand and in certain instances create the forfeiture of property related to felony offenses. It provided that revenue generated by the sale of assets forfeited be used, after satisfying court costs, to enhance the law enforcement capabilities of the applicable municipal, county, and state law enforcement agencies¹⁰.

House Bill 65 intended to take the profit out of crime, particularly drug crimes, and take the proceeds from the criminals. Prior to the passage of House Bill 65, law enforcement had to return much of the seized property to the criminal actor and, as a result, the State was basically rewarding criminals by allowing them to keep that which they had garnered from their criminal activity. House Bill 65 sought to change this.

House Bill 65 also intended to generate revenue for state law enforcement efforts. Forfeited property was given back to the State so that the property or money could be used for law enforcement.

Recent events, however, have brought to light concerns regarding the implementation and use of Chapter 59 funds. What was once a crime fighting and law enforcement tool has since become a profit-making, personal account for some law enforcement officials.

⁶ RB-2001-01 Guidance on the Civil Asset Forfeiture Statute. Credit Union Department, State of Texas.

⁷ House Research Organization Bill Analysis. House Bill 65 by Representative Dan Morales 7/14/89.

⁸ Id

⁹ Id

¹⁰ Id

Instances of abuse in both the confiscation and spending of asset forfeiture proceeds have increased at alarming rates.

Chapter 59

The scope of the Code of Criminal Procedure Chapter 59 is broad, and offenses that give rise to seizure and forfeiture generally include any felony offense. Property that is subject to seizure and forfeiture is statutorily referred to as “contraband”, and includes any: (i) property used in the commission of or to facilitate the crime; (ii) the proceeds of the crime; and (iii) property derived from or purchased with proceeds of the crime.¹¹

Chapter 59 of the Code of Criminal Procedure outlines the scope and reporting procedures overseen by the Attorney General and the Texas Comptroller of Public Accounts. The current regulatory scheme for monitoring the use of asset forfeiture under Chapter 59 first requires funds properly received by a local law enforcement agency or local prosecutor be placed in a special fund maintained at the local county or municipal level. The article further requires local law enforcement agencies or local prosecutors to submit a budget for expenditures of these funds to the appropriate county commissioners’ court or governing body of the municipality. Finally, Chapter 59 requires an agency that has the authority to hire peace officers to complete an asset forfeiture audit form each year and return it to the Office of Attorney General and the Texas Comptroller of Public Accounts which acts as a depository for these audits^{12 13}.

Should a local agency fail to or is unable to perform this audit, the Texas Comptrollers Office has statutory authority to perform the audit in its place, with the cost of that audit charged against the fund itself.¹⁴ There are no other penalties provided by the chapter for failure to comply. To that extent, the Committee recommends the imposition of a filing deadline and a financial penalty for failure to comply with reporting requirements.

Allegations of Misuse

Chapter 59 currently provides that money may be used for “law enforcement purposes only”.¹⁵ This broad definition has allowed for the ability of law enforcement agencies to use the money for needs such as office equipment, forensic testing, and specialized task forces. Many of the expenditures related to this article are used for the enforcement and prosecution of crime in Texas. Unfortunately the under-funding of these offices have led many to use Chapter 59 funds as a necessity to cover expenses and provide needed

¹¹ Tex. Code Crim. Proc. Ann. Art. 59.01 (2).

¹² Those required to complete such forms include: airport police departments, city attorneys whose jurisdiction has a population of over 250,000, city marshals, constables, county attorneys, district attorneys, fire departments and fire marshals, hospital districts, police departments, public universities and junior colleges, school districts maintaining police departments, sheriff departments, state agencies, task forces, and water districts.

¹³ Oral Testimony of Eric Nichols, Deputy Attorney General for the Office of Attorney General. Senate Committee on Criminal Justice on Interim Charge 6. Austin, Texas. June 5, 2008.

¹⁴ Tex. Code Crim. Proc. Ann. Art. 59.06(g)

¹⁵ Tex. Code Crim. Proc. Ann. Art. 59.06(c)(2).

services to their communities without placing pressure on state and local officials to provide adequate funding. Although many law enforcement and prosecutorial offices find justifiable use for the funds, recent events alleged that Chapter 59 funds have been used in campaigns, travel, office parties, and charitable contributions.

In 2005, the Montgomery County district attorney's office held a party at the county fair in east Texas. They had beer, liquor, and a margarita machine. All paid for with asset forfeiture funds intended for law enforcement purposes.¹⁶ The Montgomery County incident was not an isolated case of alleged abuse. A district attorney in west Texas allegedly took his whole staff and a judge to Hawaii for a training seminar.¹⁷ Another spent thousands of dollars on commercials for his re-election campaign.¹⁸ Each of these was a reported expenditure and indicated as a law enforcement purpose.

In submitting audit reports to state agencies, basic audit information is provided to the Office of Attorney General and the Texas Comptrollers Office. This information includes beginning balances along with seizures and forfeitures received during the reporting period. The form requires the reporting of expenditures such as salaries, travel, and equipment.¹⁹ No where in the form does it require any detail accounting or proof of receipts to the State for expenditures made.

Beyond the submission of basic information, there is no mechanism in place to review or investigate these audits to ensure funds are used for "law enforcement purposes" exclusively. Both the Office of Attorney General and the Texas Comptrollers Office lack regulatory authority to investigate these auditing practices.²⁰

The legislature must restore accountability and proper oversight to the current framework of Chapter 59. Consolidated administration of asset forfeiture reports is needed to prevent bureaucratic overlap and inefficiencies. Therefore, the Committee recommends closing loopholes in Chapter 59 by instituting the following:

1. Establishing centralized oversight for the monitoring and maintenance of Chapter 59 reports.
2. Requiring the centralized depository to draft a more detailed audit report that supplies a more accurate explanation of expenditures.
3. Granting the centralized depository investigatory power and the ability to perform random outside audits.²¹ As well as the ability to penalize agencies shown violating the chapter.

¹⁶ *The Economist*. "The Sheriff's Stash". 7/10/2008.

¹⁷ *Id*

¹⁸ *Id*

¹⁹ Attorney Representing the State Audit Form. Office of the Attorney General

²⁰ *Id* at 8.

²¹ In 2007, State Senator John Whitmire introduced Senate Bill 1780. The bill authorized the state auditor to conduct audits and investigations related to the seizure, forfeiture, receipt and specific expenditure of all proceeds and property. The bill also allowed the state auditor to access any book, account, voucher, confidential or non-confidential report, or other record of information, including electronic data, maintained by a county auditor. It provided that the state auditor may access only for purposes of performing an audit

4. Requiring the county treasurer to expend asset forfeiture funds at the direction of the prosecutor and removing the ability of the prosecutor to directly sign checks.
5. Listing specific examples of impermissible expenditures and clarifying penalties or punishment for those who violate the chapter.

Allegations of Profit Making

The government may take title to private property under criminal or civil law. Criminal forfeiture is a punitive measure taken against a defendant after a conviction, where the government seizes property as a part of the sentence. Because it is a criminal proceeding, a defendant is afforded the protections of the Fourth and Fifth Amendments. Our justice system ensures that they are considered innocent until proven guilty.

However, under civil law, a criminal charge or conviction is not necessary for a government seizure. The property itself, not the owner, is charged with involvement in a crime and is considered "guilty" until proven innocent in court by its owner, thus turning our usual system of justice in reverse. In civil forfeiture cases, the burden of proof is on the individual to get the property back from the State once the underlying cases is dismissed or acquitted.²²

By placing the burden of proof on the property owner, the government has an unfair advantage over property owners in a lawsuit to get their property returned. Such a fight can come at a great cost to property owners. Therefore, the committee recommends for property seized under civil law, the burden of proving the "guilt" of the property should shift to the government.

In civil forfeiture, a law enforcement officer only needs to show "probable cause" to seize an asset. Not surprisingly, a vast majority of the forfeitures pursued by the government are civil. Law enforcement agencies have become heavily dependent on the proceeds promulgated by Chapter 59 using such funds for salaries and office equipment. The propensity to corrupt the motives of law enforcement is one of the biggest problems with asset forfeiture policy today. Between 2005 and 2007, agencies along Highway 77 reported total assets from forfeitures and seizures of \$4,486,938.²³ Between 2000 and 2006, the district attorney's office of Jim Wells and Brooks counties directed over \$3.2 million in Jim Wells County Task Force forfeited funds to his office which were used to pay for such items as salary bonuses and travel²⁴. In Texas, with its smuggling corridors

any copyrighted or restricted information obtained by the comptroller under subscription agreements and used in the preparation of the comptroller's economic estimates. The bill passed the Senate but was left pending on House Calendars at the conclusion of the 80th Legislative Session.

²² Tex. Code Crim. Proc. Ann. Art. 59.05 (d).

²³ *The Texas Observer*. "Highway Robbery". Jan Reid. May 16, 2008.

²⁴ Salary increases are not permitted under Article 59.06 without prior approval of the county commissioners' court. Local law enforcement agencies are required by Chapter 59 to submit a budget to county commissioner's court or governing body of that municipality pertaining to expenditures. This is merely a notice requirement and does not require commissioners' approval.

to Mexico, public safety agencies seized more than \$125 million last year.²⁵ These examples have a cumulative effect: the integrity and trust in the criminal justice system is undermined.

Some poorer counties have come to rely on drug money to pay for their basic operations. Even in counties that are not strapped for cash, there is an extra incentive for law enforcement to obtain forfeiture funds. Opponents of the original House Bill 65 feared that local tax payers would realize no saving because local law enforcement budgets could not be reduced to take into account forfeited proceeds, no matter how large the windfall.²⁶ Giving seizing agencies direct financial incentives in forfeiture is an unsound policy that risks skewing enforcement priorities. One approach to this issue would be to have forfeited assets deposited into a central treasury at the state level. This reform would remove the incentive for law enforcement agencies to focus more on assets rather than criminal acts and provides greater legislative oversight of forfeited proceeds to establish accountability.

Recommendations

Asset forfeiture funding plays an important role in law enforcement funding. Law enforcement is the principal objective of forfeiture. Potential revenue must not be allowed to jeopardize the effective investigation and prosecution of criminal offenses, officer safety, the integrity of ongoing investigations, or the due process rights of citizens. With revisions made to Chapter 59, the legislature can bring more transparency and accountability into the civil asset forfeiture laws. The following summarizes the list of recommendations the Senate Committee on Criminal Justice makes to the legislature:

1. Imposing a filing deadline and a financial penalty for failure to comply with reporting requirements.
2. Establishing centralized oversight for the monitoring and maintenance of Chapter 59 reports.
3. Requiring the centralized depository to draft a more detailed audit report to give a more accurate explanation of expenditures.
4. Granting the centralized depository investigatory power and the ability to perform random outside audits. As well as the ability to penalize agencies shown violating the chapter.
5. Requiring the county treasurer to expend asset forfeiture funds at the direction of the prosecutor and removing the ability of the prosecutor to directly sign checks.
6. Listing specific examples of impermissible expenditures and clarifying penalties or punishment for those who violate the chapter.
7. For the return of property seized under civil law to the property owner, the burden of proving the “guilt” of the property should shift to the government.

²⁵ Dirty Money: Asset Seizures and Forfeitures: Seized Drug Assets Pad Police Budgets. John Burnett. National Public Radio. Morning Edition. June 16, 2008.

²⁶ House Research Organization Bill Analysis. House Bill 65 by Representative Dan Morales 7/14/89.

INTERIM CHARGE SEVEN

Study the system of deferred adjudication in Texas courts and make recommendations for resolving any problems and reducing the potential for the release of dangerous criminals.

Background

The Code of Criminal Procedure, Article 42.12, Section 5, defines deferred adjudication as a form of community supervision, which upon completion the judge may dismiss the proceedings against the defendant and discharge the person. Currently a person cannot receive deferred adjudication for driving while intoxicated (Penal Code 49.04-49.08), continuous sexual assault of a child (Penal Code 21.02), or super-aggravated sexual assault of a child (Penal Code 22.021). In addition, a person cannot receive deferred adjudication if he or she has a previous conviction for a drug crime committed in a drug-free zone (i.e. schools) or a previous conviction for a sex crime (regardless the victim's age). Deferred adjudication can be offered during plea negotiations for all other offenses, but only if the judge makes a finding in open court that the sentence is in the best interest of the victim.

The Senate Committee on Criminal Justice held a public hearing on June 5, 2008, to address this charge. Invited testimony was provided by John Bradley, 26th District Attorney of Williamson County; Randall Sims, 47th District Attorney of Potter and Armstrong Counties; Bonita White, Director of the Texas Department of Criminal Justice (TDCJ) Community Justice Assistance Division (CJAD); John Creuzot, Judge in Dallas, Texas; and Keith Hampton, Vice President of the Texas Criminal Defense Attorneys Association.

Implementation of Deferred Adjudication

TDCJ-CJAD provided documentation concerning the quantitative data on deferred adjudication. Over the last ten years there has been a shift in the number of people on adjudicated supervision and the number of people on deferred adjudication supervision. On April 30, 2008, 426,323 offenders were on adjudicated and deferred adjudication community supervision.²⁷ Of those:

Community Supervision Placements

- Felons
 - ✓ 54% Deferred adjudication
 - ✓ 46% Adjudicated
- Misdemeanants
 - ✓ 37% Deferred adjudication
 - ✓ 63% Adjudicated

²⁷ Population number came from Community Supervision Tracking System (CSTS).

Felony Community Supervision Placements

- 1997
 - ✓ 54% Adjudicated
 - ✓ 46% Deferred Adjudication
- 2007
 - ✓ 34% Adjudicated
 - ✓ 66% Deferred Adjudication

More felons were placed on adjudicated community supervision in 1997 than in 2007. More felons are being placed on deferred adjudication today.

Misdemeanor Community Supervision Placements

- 1997
 - ✓ 63% Adjudicated
 - ✓ 37% Deferred Adjudication
- 2007
 - ✓ 52% Adjudicated
 - ✓ 48% Deferred Adjudication

Misdemeanor cases are adjudicated more than they are deferred. However, the number of misdemeanors receiving deferred adjudication has grown.

23% of all the people on felony deferred adjudication supervision are serving for a violent offense (Table 1). 58% of felony offenders on deferred adjudication are under state supervision for assault or aggravated assault. 14.9% are sexual assault or aggravated sexual assault offenders (Table 2). TDCJ-CJAD testified that there are over 130 unique offenses for offenders under deferred adjudication supervision. The largest percentage of offenders (25%) was on deferred adjudication for aggravated assault with a deadly weapon (Table 3).

In FY 07 there were 13,690 revocations for felony deferred adjudication (Table 4). Table 5 displays the revocations by the offense the person originally committed.

Table 1

| Profile of Offenders Being Supervised Statewide on April 30, 2008 | | | | |
|--|-----------------|--------------------|--------------------|--------------------|
| | Deferred | | Adjudicated | |
| | Felony | Misdemeanor | Felony | Misdemeanor |
| Gender | | | | |
| Male | 71% | 68% | 79% | 80% |
| Female | 29% | 32% | 21% | 20% |
| Race | | | | |
| African-American | 24% | 23% | 17% | 13% |
| Caucasian | 43% | 46% | 40% | 45% |
| Hispanic | 32% | 30% | 42% | 41% |
| Other | 1% | 1% | 1% | 1% |
| Age | | | | |
| 17-21 | 14% | 28% | 5% | 8% |
| 22-25 | 19% | 20% | 12% | 17% |
| 26-30 | 19% | 17% | 17% | 19% |
| 31-40 | 25% | 19% | 29% | 27% |
| 41-50 | 16% | 11% | 24% | 19% |
| 51+ | 7% | 5% | 13% | 10% |
| Offense Degree | | | | |
| | 65% | 35% | 49% | 51% |
| Offense | | | | |
| Violent | 23% | 15% | 14% | 9% |
| Property | 29% | 30% | 23% | 12% |
| DWI/DUI | 0%* | 1% | 20% | 57% |
| Controlled Substance | 38% | 24% | 34% | 8% |
| Other | 10% | 30% | 9% | 14% |
| Risk Level | | | | |
| Minimum | 33% | 42% | 27% | 44% |
| Medium | 43% | 43% | 41% | 37% |
| Maximum | 24% | 15% | 32% | 19% |

All percentages are rounded. *0% indicates less than .5% of the given population

Table 2

| Violent Offenders on Felony Deferred Supervision on April 30, 2008 | |
|---|-------------------|
| Offense Category | Percentage |
| Homicides | 1.5% |
| Kidnapping (including aggravated) | 0.9% |
| Sexual Assault (including aggravated) | 14.9% |
| Robbery (including aggravated) | 12.5% |
| Assault (including aggravated) | 58.1% |
| Other Sexual Offenses | 12.1% |
| Crimes Against Person (misc.) | 0% |

Table 3

| Offenders on Deferred Adjudication on April 30, 2008 | |
|---|-------------------|
| Offense Category | Percentage |
| Aggravated Assault with a Deadly Weapon | 25% |
| Indecency with Child Sexual Contact | 8% |
| Aggravated Assault Cause Serious Bodily Injury | 7% |
| Aggravated Robbery | 7% |
| Robbery | 6% |
| Aggravated Sexual Assault Child | 6% |

Table 4

| FY2007 Revocations by Community Supervision Type* | | | |
|--|---------------------------|--------------------------------|--------------------------|
| | Felony Revocations | Misdemeanor Revocations | Total Revocations |
| Adjudicated | 12,140 | 15,696 | 27,836 |
| | 47% | 60% | 54% |
| Deferred Adjudication | 13,690 | 10,464 | 24,154 |
| | 53% | 40% | 46% |
| Total | 25,830 | 26,160 | 51,990 |
| | 100% | 100% | 100% |

Table 5

| FY2007 Deferred Adjudication Revocations by Offense* | | | | | | |
|---|---------------|---------------|--------------------|---------------|---------------|---------------|
| | Felony | | Misdemeanor | | Total | |
| | # | % | # | % | # | % |
| Homicide | 27 | 0.0% | 0 | 0.0% | 27 | 0.1% |
| Sexual Assault | 493 | 3.6% | 0 | 0.0% | 493 | 2.0% |
| Other Sex Offenses | 301 | 2.0% | 21 | 0.2% | 322 | 1.3% |
| Robbery | 438 | 3.2% | 5 | 0.0% | 443 | 1.8% |
| Assault | 1,683 | 12.3% | 1,561 | 14.9% | 3,244 | 13.4% |
| Kidnapping | 27 | 0.0% | 0 | 0.0% | 27 | 0.1% |
| Burglary | 1,560 | 11.4% | 293 | 2.8% | 1,853 | 7.7% |
| Theft | 1,067 | 7.8% | 2,232 | 21.3% | 3,299 | 13.7% |
| Stolen Vehicle | 438 | 3.2% | 10 | 0.0% | 448 | 1.9% |
| Forgery | 794 | 5.8% | 31 | 0.0% | 825 | 3.4% |
| Other Property | 643 | 4.7% | 315 | 3.0% | 958 | 4.0% |
| DWI/DUI | 5 | 0.0% | 10 | 0.0% | 15 | 0.0% |
| Controlled Substance | 5,187 | 37.9% | 3,323 | 31.8% | 8,510 | 35.2% |
| Other Offenses | 1,027 | 7.5% | 2,663 | 25.4% | 3,690 | 15.3% |
| Total | 13,690 | 100.0% | 10,464 | 100.0% | 24,154 | 100.0% |

Judge Creuzot's testimony answered the charge question directly. He stated that there is no evidence supporting the idea that deferred adjudication causes more crime. He further testified that he uses it for some first time and young offenders. He considers it to be a rehabilitative tool offered after much consideration from all involved parties.

District Attorney Sims testified that deferred adjudication is the most valuable tool prosecutors have available. The example he used was of a defendant being offered deferred adjudication for a sex offense case because the witness would not testify. The defendant failed to comply with all the conditions of his deferred adjudication which was subsequently revoked. District Attorney Bradley's testimony reiterated that people were only given one chance at deferred adjudication. If they do not take advantage of this chance at rehabilitation they will not get another. His explanation of deferred is laid out in an article for the Texas Bar Journal titled "Deferred Adjudication". This article can be found at:

www.texasbar.com/Template.cfm?Section=Home&CONTENTID=14894&TEMPLATE=/ContentManagement/ContentDisplay.cfm

Keith Hampton testified more about deferred adjudication and less about the people who receive it. He testified that receiving deferred adjudication was both normal and ordinary. He was concerned about the cause of the revocations rather than the type of people on deferred adjudication. His example was of a client who was granted deferred adjudication and then revoked because of failure to pay a five dollar drug screening fee. This minor technical violation led to the client being punished to the full extent. He explains that a prosecutor later told him it was a "set up," in that the client was never intended to complete his deferred adjudication.

Public Testimony

During public testimony, a panel was called consisting of Michael Thomas, Mike Mullins, and multiple people from the Texas Association for Justice and Legal Reform. This panel was concerned with what happens after an individual successfully completes deferred adjudication. As stated in Article 42.12, upon completion of deferred adjudication the proceedings against the defendant are dismissed and the defendant is discharged. This article also states that a discharge and dismissal under this section may not be deemed a conviction for the purposes of disqualification or disabilities imposed by law for conviction of an offense. Members of this panel have been denied apartments, occupational licenses, entrance to schools, and jobs as a direct result of having deferred adjudication on their records. It is affecting them the same way a conviction would affect them. They do not, however, have the privilege of appellate relief or applying for a pardon.

Currently people can obtain a motion for nondisclosure in order to seal the records from the public. People on deferred adjudication for a class A or B misdemeanor can petition the court 5 years after completion of deferred adjudication, while people on deferred adjudication for a felony must wait 10 years. Unfortunately, this does not assist with the licensing agencies. Their solution would be to allow for expunctions after completion of

deferred adjudication. Opponents of liability relief are concerned with expunction for defendants serving for more serious or violent offenses. One option would be for defendants to return to the original judge for ruling on the expunction. Another would be to further limit who is eligible for deferred adjudication.

Conclusion

It is apparent that deferred adjudication is used by different people for different reasons. Prosecutors use it for one reason while judges, defendants, and defense attorneys accept it for another. The purpose of deferred adjudication has been confused. In order to address who should be offered deferred adjudication the function should be clarified.

Recommendations

A review of the deferred adjudication process reveals that deferred adjudication is utilized by various people for various purposes. Presently there are dangerous criminals receiving deferred adjudication. To better protect our communities and to clarify the use of deferred adjudication, the Senate Committee on Criminal Justice presents the following recommendations to the legislature:

1. A change should be made in statute providing increased justification for a violent offender receiving deferred adjudication. Current law only mandates that the judge accepting the plea specifies that it is in the best interest of the victim. This should be expanded as to why it is in the best interest of the victim.
2. Upon successful completion of deferred adjudication, the court should be mandated to impose an immediate expunction of the criminal record in the case of a non-violent offender.
3. Statute should be adjusted to prevent the information on an individual from being entered into the conviction database of a non-violent offender.

INTERIM CHARGE EIGHT

Study and recommend best practices for reducing re-victimization of child abuse victims associated with delay in resolution of criminal cases. Recommend options for reducing the time lapse between child victimization and criminal hearings.

Background

The Senate Committee on Criminal Justice conducted a public hearing on this charge on July 9, 2008. Invited testimony was provided by Ms. Joy Rauls, Director of Community Relations of the Children's Advocacy Centers of Texas, Inc. (CACTX) and Mr. Dan Powers, Clinical Director of the Collins County Children's Advocacy Center (CAC). CACTX's web site (www.cactx.org) describes their association as the statewide membership association representing all local children's advocacy centers (CAC) within the state of Texas. Membership includes 61 established or developing centers in both large urban areas and small rural communities, with a shared mission to restore the lives of abused children by supporting partnership with local communities and agencies investigating and prosecuting child abuse.

Ms. Rauls testified that CACs receive approximately \$12 million in financial assistance from the State of Texas Crime Victims Compensation Funds through the Attorney Generals Office, which is distributed to the CACs by a formula. For every \$1 the state appropriates, the CACs raise \$6 in private funds.

Re-victimization Caused by Delays

Along with their verbal testimony, CACTX provided written testimony explaining their concerns with the court system's processing of child victim abuse cases.

The CAC model and the legislation governing CACs has minimized re-victimization during investigative and legal proceedings by providing critical therapy services and reducing the number of times a child has to tell their story to various agencies. Delays in the court system, however, often create another source of trauma for child victims.

The vast majority of child sexual abuse victims are abused by someone they know, love, and trust. In FY 07, 98% of over 37,000 clients who came through a CAC knew their alleged perpetrator. Therefore, the dynamics of these cases are extremely complicated. This includes the difficult process of disclosing abuse and eventually facing the perpetrator in the courtroom. As delays in the court system persist, children are asked to repeatedly come back to court and face the perpetrator. This experience is not only frightening, but also emotionally damaging.

Given the trauma and difficulty of repeated court appearances, delays can also cause children and their supporting family members to become uncooperative and refuse to participate in the criminal justice process due to a desire to move on and heal. Justice is

an important part of healing, but a lingering case is damaging to this healing process. Unfortunately, delays may weaken the case. This is particularly true for young children whose memory of the event will deteriorate over time.

Delays in the criminal court system occur for a wide variety of reasons. Continuances are often granted on other cases on the docket, such as those where the alleged perpetrator has not made bond and is in jail, are given higher priority. Moreover, child abuse cases, particularly those involving sexual abuse, are among the most difficult and lengthy court cases. Therefore, courts often will need a committed block of time to hear these cases. This factor can also cause cases to be passed over on the docket due to concerns about potential scheduling issues.

Children's Advocacy Centers of Texas, Inc. Proposed Solutions

CACTX's written information also provided their suggested solutions to the defined problems as follows:

Due to the complexity of these cases, there is no one solitary solution to reducing such delays and thus re-victimization. Every case, prosecutor's office, court and defendant is different. However, there are some solutions which might offer relief in these cases:

- **Increased support for family advocates and victim/witness coordinators:** Understanding that delays will often occur, victims and families need support and updates on the process. Once the case is ready to go to trial, victim/witness coordinators, located in prosecutor's offices, will work with the victim, but there is often a lull before the case gets to their office and even when long periods of time lapse between docket settings and when continuances are granted. Family advocates, who often work at CACs, are a valuable component to reducing anxiety about the process and keeping the victim and their family involved and willing to participate. If no one is in contact with that family during this lag the family may not want to participate when it is time for trial, and in some cases, may not even be located. Providing additional support for both of these vital positions, and thereby ensuring a continuum of support and attention for young crime victims and their families, will help get them through the difficult waiting period before trial, minimize re-victimization when there are delays, and increase the likelihood that victim families will fully cooperate in the criminal justice process.
- **Continued support for the CAC multidisciplinary approach in child abuse cases:** Collaboration in these difficult cases leads to stronger, fact-based cases, more efficient and effective decision making, and better outcomes for all concerned. At a CAC, law enforcement, CPS, medical and mental health professionals view and discuss the child's videotaped interview. Working together, these professionals are able to make efficient decisions as to whether or not abuse has occurred and, if it has, what legal steps need to be taken next. This collaborative approach can help reduce delays early on in the process when critical decisions are being made. In FY 07, CACs in Texas facilitated 26,021

regularly scheduled, multi-disciplinary team meetings of professionals for the purpose of case review and collaborative case strategy development. This team case review process is also a statutory requirement for CACs and Texas (Tex. Family Code 264.406). Continued legislative support for the collaborative team approach found at CACs will create more efficient decision making and thus reduce unneeded delays early in the process.

- **Review the statutory prioritization of cases for trial courts in the Government Code:** Section 23.101 of the Texas Government Code lays out the prioritization trial courts in Texas must follow when setting cases. In order to ensure child sexual abuse cases are resolved expeditiously, and children are not put through undue delays, the priority order and language in this statute could be reviewed and assessed bearing in mind the effect delays have on child victims.
- **No-Contact Provisions for Bond:** Given that delays will often exist in these cases, children need to be protected from contact with the alleged perpetrator. Such contact creates another avenue for re-victimization of the child during the delay before trial. In many child sexual abuse cases the perpetrator is a first time offender, and therefore the court is legally required to set bond. Often judges grant no-contact provisions as a bond condition, but such provisions are only placed on the defendant *at the request* of the State. Requiring an automatic no-contact condition in these cases is a potential solution. Additionally, under current law, if the defendant violates the no-contact provision of the bond, the court must grant the defendant another bond. Amending the Constitution to allow denial of bond upon violation of such conditions (similar to Proposition 13 which passed in 2007 regarding domestic violence cases), would be a potential policy change to ensure all child sexual abuse victims are kept safe. Another additional safeguard would be to require immediate CPS notification if the non-offending care-giver allowed the perpetrator to engage in the prohibited contact.
- **Legislative Interim Study:** Many counties have developed unique court structures, often through local funding, which enable child abuse cases to move through the system more efficiently. A study of such systems coupled with further support for counties who have found an effective system for resolving undue delays in these cases would be helpful. Of course this is recommended with the understanding that what works for one county may not work for another. One example which has been implemented by a handful of counties is overflow auxiliary courts set up to hear child abuse cases which are over 2 years old and have not yet been set for trial.
- **Judicial Education:** Due to the fact that child sexual abuse cases involve extremely complex dynamics, a judicial education program for criminal court judges, similar to what has been required for judges who hear civil child protective services cases, would be helpful. An enhanced understanding of the child disclosure and healing process would be beneficial to judges when making decisions on the priority of these cases.

Additional Considerations

During public testimony Ms. Patricia Hogue, Attorney and Director of Education and Outreach for the Texas Association for the Protection of Children in Dallas, Texas, presented information in support of statutory changes that would give child sex abuse cases the same priority as those where the defendant(s) is currently in jail. She stated that in her experience as a former prosecutor with the Dallas District Attorneys Office, jailed defendants in these cases are resolved in an average of one year, while bond cases are generally resolved within two years.

Texas Government Code Subchapter B, 23.101 (2) (C) (i)(ii) (iii) currently instructs trial courts to regularly and frequently set hearings and trials of pending matters, giving preference to hearings and trials of aggravated sexual abuse of a child, sexual abuse of a child, and Indecency with a child. Although the priority for defendants in jail is established earlier in the subchapter, it is clear that trial courts are to give preference to this style of case. Committee members in their discussion of this issue expressed a concern that the legislature should not micro-manage an elected trial judge's docket.

Ms. Hogue also supported the addition of mandatory language prohibiting contact with the victim or any one under 17 as a prerequisite of bond. She stated that this is added when the prosecutor presents these issues to the court, and in some cases is not made a condition of bond.

Ms. Amy Mills, Assistant District Attorney with the Tarrant County District Attorneys Office in Fort Worth, Texas, also presented information during public testimony. She testified that Tarrant County has addressed the above issue by the Board of District Judges promulgation of a District Judge Rule. This rule stipulates that all bonds in child sex abuse cases be contingent on the accused having no contact with the victim and no unsupervised contact with any child under the age of 17. The amount of bond is substantially raised if the accused violates this contingency. If the child victim's caregiver or legal guardian is indicated for allowing contact with the victim or another child, the result is automatic referral to Child Protective Services (CPS).

At several points during the hearing, the issue of the defendant's due process rights and the adversarial criminal trial system were discussed. Our legal system provides a fundamental right to a fair trial and the right to confront one's accuser. The Honorable John J. Bowman, Presiding Justice of the Illinois Appellate Court, 2nd District, provides a thoughtful discussion on this issue in his article entitled *Balancing the Emotional Needs of a Child and the Due Process Right of a Defendant in Sexual Abuse Cases*. This article can be found in the January 1998 issue of the DuPage County Bar Association Journal and includes the following two major points:

"In our rush to shield the youngest member of society from reliving what, if proven, are unquestionably the most traumatic event in their short lives, we have gradually begun to impinge upon the fundamental due process rights of criminal defendants".

"By emotionally implementing the rules which govern child sex abuse trials because of the desire to spare a child complainant any more emotional trauma, courts too often straddle the line between a fair trial and an unconstitutional trial".

His article can be reviewed at www.dcba.org/brief/janissue/1998/art10198.htm.

Recommendations

The committee encourages district judges trying criminal cases and the boards of district judges trying criminal cases to adopt the expressed best practices in cases involving child sexual assault victims by promulgation of a district judge rule. This rule should stipulate:

1. That all bonds in child sex abuse cases be contingent on the accused having no contact with the victim and no unsupervised contact with any child under the age of 17.
2. That the amount of bond is substantially raised if the accused violates this contingency.
3. If the child victim's care giver or legal guardian is indicated for allowing contact with the victim or another child, the result is automatic referral to Child Protective Services (CPS).
4. That cases which have a child sexual assault victim are given priority in docket settings, regardless of the accused being incarcerated in a County Jail or on bond.

INTERIM CHARGE NINE

Review the processes for re-entry of criminal offenders into communities. Identify barriers to the successful return to law-abiding behavior, including the absence of employment opportunities created by restriction on obtaining certain state occupational licenses. Provide recommendations for improvements to our current statutes governing this matter.

Introduction

Over the last decade, legislation has been passed to restrict criminal offenders from receiving state licenses to work in various professions. Research has shown that the greatest deterrent to future crimes is meaningful full-time employment. An attempt was made during the 80th Legislative Session to create solutions for this problem with Senate Bill 1750. However, the act passed the Senate but was pending in the House Calendars Committee at the end of session.

As provided in the author's statement of purpose and intent, S.B. 1750 would have modified the list of persons and entities that are identified in Chapter 53, Texas Occupations Code. The bill did not apply to a reserve law enforcement officer, a county jailer, or a public security officer licensed or applying for a license under Chapter 1701, Occupations Code, or a person who is licensed by certain agencies, including the Texas State Board of Examiners of Psychologists, the Board of Nurse Examiners, the Texas State Board of Public Accountancy, or is licensed under Chapter 156, Finance Code; and has been convicted of certain offenses.

S.B. 1750 authorizes licensing authorities to suspend or revoke a license, disqualify a person from receiving a license, or deny a person the opportunity to take a licensing examination on the grounds that the person has been convicted of an offense that directly relates to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license. This bill also provided that unless the aforementioned restrictions apply to an applicant for a license, the licensing authority is required to issue a license for which the applicant applied or a provisional license for a term of six months. S.B. 1750 required the licensing authority to report the issuance of a provisional license to the appropriate supervising department, if the person is on probation or on parole.

Issues Surrounding Occupational Licensing

Mark Levin, Director of the Public Policy Foundation's Center for Effective Justice, presented written testimony in which he identified and examined the issue of ex-offender barriers to re-entering the workforce. He provided that:

- Approximately 20 percent of Texans have a criminal record. Ex-offenders can be excluded from nearly every occupation either under Chapter 53 (Occupation

Code) or under specific statutes governing the occupation, such as those that apply to the Private Security Board. The *Austin American-Statesman* reported that the Board in 2006 alone "cited an unacceptable criminal history to summarily deny nearly 10,000 applicants the opportunity to work in one of the 16 professions it regulates," including locksmiths and guard dog trainers.²⁸ Many of these revocations involved minor misdemeanors decades ago that had no relevance to the occupation. Unlike most other occupations, an arrest without a conviction can lead to license revocation and there is no appeal to the Board of State Office of Administrative Hearings.

- Clearly, a sex offender should not be a licensed day care worker and someone who committed insurance fraud shouldn't be licensed to sell insurance. But many agencies have defined nearly all crimes as "directly related under Chapter 53. For example, a drug possession offense, even a misdemeanor, is considered directly related to being a water well driller and an embalmer. Any felony prevents a person from being a vehicle inspector.
- Studies have found that individuals whose last offense occurred many years ago are very unlikely to re-offend. Researchers at the University of South Carolina and University of Maryland concluded in a 2006 longitudinal study of ex-offenders: "Our findings suggest that after approximately seven years there is little to no distinguishable difference in risk of future offending between those with an old criminal record and those without a criminal record."²⁹ Moreover, most re-offending acts, and the vast majority of those committed by nonviolent ex-offenders, are nonviolent.³⁰ Also, most of these offenses would have had the same impact whether or not the person had an occupational license.
- Gainful employment significantly reduces criminal behavior. A study by the federal court system found that nearly 88 percent of the 624 probationers who were employed both at the start and at the end of their supervision, successfully complied with the conditions of their supervision. On the other hand, less than 37 percent of those unemployed at both stages did so.³¹ A Massachusetts study of parolees found that those employed within the first three months of leaving prison were more than seven times less likely to return to prison.³² A Pennsylvania study found that ex-offenders who are employed are much more likely to fulfill their restitution obligation.³³

²⁸ Eric Dexheimer, "Locked Out of Their Livelihoods", *Austin American Statesmen* (18 Feb. 2007)

²⁹ Megan C. Kurlychek, Robert Brame, Shawn D. Bushway, "Enduring Risk? Old Criminal Records and Short-term Prediction of Criminal Involvement."

³⁰ Recidivism of Inmates Released in 1994, U. S. Department of Justice Bureau of Justice Statistics (June 2002)

³¹ James L. Johnson, "Sex Offenders on Federal Community Supervision: Factors that influence revocation", *Federal Probation* 70 (June 2006)

³² Michael Morrissey, "A Description of the Employment Patterns of Persons Released from Virginia's Correctional Institutes between July 1, 1998 and June 30, 2002" (Aug. 2007)

³³ Center for Research on Criminal Justice, "Predictors and Outcomes of restitution in Pennsylvania", Pennsylvania State University (2002)

Texas Department of Criminal Justice Re-entry Process

Written testimony for the Texas Department of Criminal Justice (TDCJ) contained the following information regarding the re-entry process:

In many ways, preparation for re-entry begins at the time an offender enters into the Texas Department of Criminal Justice (TDCJ). During the intake or reception process, the TDCJ sociologists conduct multiple offender interviews to gather information regarding family, employment, residence, substance abuse history and criminal history. Medical staff evaluates both the physical and mental health of incoming offenders, and can utilize the information contained in health status updates from county jails as well as the mental health history contained in the Department of State Health Services CARE (Client Access Registration) system when providing treatment.

The TDCJ also has Memorandums of Understanding (MOU) with other state and federal agencies that allow for the exchange of prior service history information. Currently, the Department of Aging and Disability Services (DADS), Department of Assistive and Rehabilitative Services (DARS), and the Department of State Health Services (DSHS) have working agreements with TDCJ that define their respective role and responsibility for continuity of care for offenders with special needs. These MOUs will allow the TDCJ to initiate data sharing activities during intake similar to that currently in place with the state's mental health system.

The Windham School District (WSD) and the TDCJ administer tests to measure the educational achievement and intellectual capacity of incoming offenders. Windham identifies learning disabilities and verifies achievement in public schools in cooperation with public school districts across the state. The Rehabilitation and Reentry Programs Division (RRPD) screens all offenders for alcohol and drug abuse, with more extensive assessments administered to those identified with certain scores. The information obtained from the numerous interviews, examinations and assessments is used not only to make custody and housing assignments which impact the safety and security of offenders and staff alike, but are integral components in the development of an Individualized Treatment Plan (ITP) for each incoming offender.

Pre- and post-release assessments include the Static 99 for sex offenders (soon to be replaced with a dynamic risk assessment developed by the Council on Sex Offender Treatment), and the risk assessment the Parole Division (PD) utilizes to guide supervision strategies. A pilot program is currently underway aimed at updating the PD's risk assessment instrument in order to capture more dynamic factors.

Offender programming opportunities while incarcerated includes academic and vocational education provided by the WSD. Literacy, GED, Special Education and English as a Second Language (ESL) are among the academic courses offered, while career and technical training is offered in more than 30 occupations, such as mill and cabinet making, auto specialization, and welding. Post-secondary academic and vocational education is also available through contracts with junior and senior colleges

across the state. Parole officers may follow up with referrals to Project COPE (Community Opportunity Programs in Education), a Cooperative Adult Education Program for releasees.

In addition to academic and vocational classes, the WSD prepares offenders for return to the community with life skills programming aimed at enhancing an offender's ability to make decisions, search for a job, engage in successful relationships, manage financial affairs, and be successful parents. Cognitive intervention training is designed to improve behavior during incarceration and post-release by addressing thinking patterns which lead to criminal behavior.

Project RIO (Re-integration of Offenders), a multi-agency collaboration involving the WSD, Texas Workforce Commission (TWC) and the TDCJ, supplements vocational training provided by both Windham and Texas Correctional Industries' War Against Recidivism program with employment skills such as interviewing and resume writing as well as post-release job search services. Project RIO also secures needed documents for offender transition into the community, such as drivers' license, Social Security card, birth certificate, training certificates and DD-214's. Institutional Parole Officers assist offenders not participating in Project RIO with obtaining their Social Security cards upon release.

Substance abuse programming includes the In-Prison Therapeutic Community (IPTC) program, an intensive substance abuse treatment program for offenders approved for parole contingent upon completion, and the Substance Abuse Felony Punishment Facility (SAFPF) Program, similar to the IPTC but primarily serving probationers. For offenders who participated in the SAFPF or IPTC Program, a continuum of care is coordinated and provided at the time of their release, which includes aftercare in both a residential and outpatient setting. Other substance abuse programming includes the Pre-Release Substance Abuse Program (PRSAP) and Pre-Release Therapeutic Community (PRTC), both intensive substance abuse treatment programs treating offenders approved for parole contingent upon completion of the program; a new six (6) month program designed specifically for DWI offenders; and the State Jail Substance Abuse Program, a multimodal program serving state jail felons in various stages of recovery.

Multi-disciplinary and multi-agency collaboration is necessary for the success of re-entry efforts, and particularly necessary in regards to special needs offenders such as the mentally ill, physically handicapped and elderly. The TDCJ - Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI) facilitates communication and coordination among more than 200 state and local agencies, contracts with these entities for an array of services for offenders with special needs, and ensures that continuity of care for releasing offenders is provided through coordination with state and local entities. Extensive information sharing between criminal justice, law enforcement, and health and human service agencies is facilitated through MOUs and inter-agency working groups. Medical and psychiatric treatment referrals are made six (6) months prior to release, and applications for federal entitlements such as social security and supplemental security income are initiated 90 days before offenders return to

the community. The TDCJ has signed MOUs with the Social Security Administration and the Veterans Information Service Network regarding documentation of prior eligibility and re-applying for benefits prior to the offender's release.

Institutional and field parole officers work with offenders to identify acceptable post-release residences, and make temporary placement in contract residential facilities for those lacking suitable alternatives.

Graduated sanctions policies by the PD and the Board of Pardons and Paroles (BPP) include the use of Intermediate Sanction Facilities (ISFs), mandatory substance abuse treatment and more restrictive reporting and monitoring requirements in lieu of revocation for many technical violations. Technical parole violations continue to represent a small percentage of all prison admissions, while revocations of parole for technical violations continue to constitute only about 20 percent of all parole revocations.

The use of evidence-based practices to develop and evaluate programs continues to indicate programs such as the IPTC, SAFPF, Sex Offender Treatment, Sex Offender Education and academic education are successful in reducing recidivism, while the WSD vocational programs have a positive impact on post-release employment, salaries and job retention.

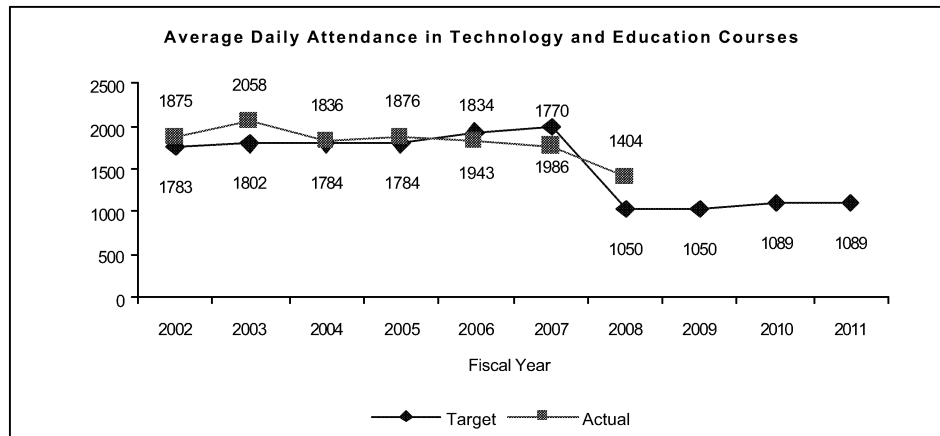
Some of the more significant challenges in facilitating successful re-entry involve the limited availability of programming to all offenders (although the expansion of diversion and treatment programs approved by the 80th Legislature will increase program capacity); community opposition to releasing offenders residing in their communities, particularly those convicted of sex offenses; the combination of financial obligations and barriers to employment confronting ex-offenders, the increasing number of releasing offenders who discharge their sentences (not subject to supervision nor eligible for services provided through the criminal justice system); and federal and/or state eligibility guidelines for services which exclude offenders.

During Fiscal Year 2007 more than 72,000 offenders were released, including offenders released from prison, state jails and SAFPFs.

Juvenile Employment and State Vocational Licensure

In response to questions from this committee on the impact of vocational training and the ability to obtain state licenses for former Texas Youth Commission (TYC) offenders, TYC provided the following:

TYC Technology and education courses had an outstanding year, performing at well above their targeted capacity. More interest in the programs, providing the option in the McLennan County State Juvenile Correctional Orientation and Assessment Unit and expanding available courses contributed to their success.



Between TYC facilities and contract care services a rather wide array of vocational education and certification is available to TYC youth. State licensure, in most cases, is a long process involving many hours of apprenticeship, and/or journeyman training. However, TYC youth can accomplish many of the initial experiential and academic portions of these same professions while in TYC.

Below is a chart depicting the location and types of vocational opportunities available at TYC contract facilities:

| Contract Care Placement Location | Type of Vocational Programming | Certification |
|--|--|--------------------------------|
| Mel Matthews Vocational Center Cisco, TX Eastland County | Welding, Woodworking, Small Engine Repair | None – high school credit only |
| Gulf Coast Trades Center New Waverly, TX Walker County | Horticulture, Millwork & Cabinet Making, Stone Masonry & Bricklaying, Desktop Publishing, Building Trades, Culinary Arts, Auto Technology, Construction Carpentry, Paint and Decorating. | None |
| Associated Marine Institutes, Inc., dba RGMI – Los Fresnos, TX Cameron County | Basic Carpentry, Cooking & Kitchen Work, Wood Shop, Plumbing, Seamanship | None |

TYC facilities offer additional vocational education and training as well. The attached listing shows 11 TYC facilities which offer at least 21 different courses – almost all with possible state or national certification available.

State Vocational License Issues

There are few absolute restrictions to TYC youth obtaining state occupational licenses, but there are several statutes that apply to the subject³⁴. The Criminal Conviction Guidelines used by the Texas Department of Licensing and Regulation set some of these restrictions. Every separate professional entity has its own rules under those guidelines because the setting and duties vary. These rules “must directly relate to the duties and responsibilities of the licensed occupation.” The Texas Occupations Code, §53.023, also states that the licensing authority should consider the age of the person at the time of the offense, how long ago the offense/conviction occurred, the extent of the person’s criminal record, evidence of rehabilitation, and letters of reference.

As for parole conditions, obvious employment preclusions may be settings such as hospitals, day-care centers, nursing homes and others where vulnerable populations are served. Other restrictions in the law include occupations where firearms are standard equipment, where master keys to apartments in apartment complexes are available, where access to large amounts of cash, drugs or other valuables may be misappropriated, etc.

A number of professional licenses also preclude any convicted felon (or perceived convicted misdemeanor or felon) from obtaining a place among their ranks, although this is often an unwritten practice. Sex offenders, in particular, are excluded from these and a number of other occupational (and residential) settings.

TYC youth are not considered “convicted felons,” but juveniles involved in felonious conduct adjudicated under the Texas Family Code. The juvenile record is further protected by Texas Human Resources Code §61.03, even after a youth is transferred to the adult system. However, if a determinate sentenced offender (DSO) in TYC custody is transferred to TDCJ-ID, certain pieces of information may become public, such as the sentence title and length of incarceration set by the court. Youth and their families receive guidance about records protection rules in a publication given to them during the intake process.

Many of the restrictions to state licensure are simply related to age. The rules vary from one to another profession, but persons under 21 years of age may not hold some types of state vocational licenses.

³⁴ Texas Occupations Code, Chapter 52 “Consequences of Criminal Conviction” Section 53.021; Texas Department of Licensing and Regulation, Texas Family Code

Recommendations

Testimony presented at the committee's public hearing on November 13, 2008, revealed the importance of providing re-entry programs and services to offenders released from the various treatment programs provided during periods of incarceration. The committee recommends:

1. Enhance the resources for the various specialty courts such as the SAFP re-entry courts operating in Fort Bend, Dallas, and Angelina Counties.
2. Fully implement the halfway houses and other treatment residential programs envisioned in the programs appropriated through TDCJ by the 80th Legislature.
3. Passage of a statute providing provisional occupational licenses for former offenders such as those introduced in S.B. 1750 (80R). Increase the assistance provided to former offenders through Project RIO for tools that can be used in various trades.
4. Increase the number of offenders leaving from TDCJ facilities with state identification.

INTERIM CHARGE TEN

Study whether Articles 36.09 (relating to trying multiple defendants from the same transaction either separately or jointly) and 36.10 (relating to severing defendants that show prejudice from a joint trial) of the Texas Code of Criminal Procedure provide sufficient safeguards to ensure fair and reliable trial results in capital cases with multiple defendants. Determine whether the articles provide trial judges with sufficient instruction regarding joinder or severance of defendants and, if not, make recommendations to improve procedures.

Background

On May 5, 1997, a state district judge in a San Antonio court handed down the verdict of the death penalty for Kenneth Foster. Foster had been tried alongside Mauriceo Brown, for the 1996 murder of Michael LaHood, rather than in a separate trial.³⁵ He was charged under the State's law of severance otherwise known as "law of parties" statute.³⁶ The statute maintains that there is no difference between the perpetrator of a crime and an accomplice when the accomplice had prior knowledge that the crime would happen. Article 36.09 of Texas Code of Criminal Procedure governs the law of severance. It reads in pertinent part:

Two or more defendants who are tried jointly or separately indicted or complained against for the same offense or any offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately . . . provided that . . . in cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant, the court shall order a severance . . .³⁷

Article 36.09 of Texas Code of Criminal Procedure indicates that the trial court should grant a severance when: (1) one defendant has a prior admissible criminal record and the other does not; (2) the defendants are not charged with the same offense or with offenses growing out of the same transaction; or (3) the defendant has satisfied the burden of offering evidence showing a clear prejudice caused by the joinder.³⁸ Absent evidence of

³⁵ The murder of Michael LaHood occurred on the night of August 14, 1996. Kenneth Foster, along with Mauriceo Brown, DeWayne Dillard, and Julius Steen, used Dillard's gun to commit two armed robberies, reportedly under the influence of alcohol and marijuana. According to testimony, Mauriceo Brown got out of the vehicle and robbed and killed LaHood. They had not discussed robbing or killing LaHood, and instead had followed Mary Patrick to get her phone number. They claimed that despite having just committed two robberies and followed Ms. Patrick for miles, they had no idea another robbery was going to take place. Foster, the driver, began to leave the scene, but the others convinced him to wait for Brown. They were caught and arrested on August 15, 1996.

³⁶ Texas Penal Code Section 7.02(b).

³⁷ Tex. Crim. Proc. Code Ann. art 36.09 (Vernon 1981).

³⁸ *Mulder v. State*, 707 S.W.2d 908, 915 (Tex. Crim. App. 1986).

prejudice to one defendant in a joint trial, or evidence that one defendant has a prior admissible conviction; a motion for severance is left to the trial court's discretion.³⁹

Under the law of parties, the jury in the Foster case was not required to find that Kenneth Foster was directly involved or had any intention. Jurors only needed to conclude that Foster should have anticipated that Brown's actions might result in LaHood's death.⁴⁰ *Tison v. Arizona* established the precedent that a person may be executed for a crime he or she did not commit if he or she was a "major participant" or acted with "reckless indifference to the value of human life".⁴¹

When an accused is not entitled to a severance as a matter of right, the denial of the same by the trial court constitutes an abuse of discretion only when the movant satisfies the heavy burden of showing clear prejudice.⁴² The mere allegation of prejudice is not enough to satisfy this burden.

Recommendations

The Texas Board of Pardons and Paroles recommended Kenneth Foster's sentence be commuted to life in prison on August 30, 2007, by a majority of 6 to 1. Governor Rick Perry accepted the recommendation of the board, and converted Foster's sentence to life in prison, with a possibility of parole in 2037. The commutation was confirmed a mere three hours before Foster was due to die by lethal injection.⁴³

In light of these circumstances, *the Committee recommends in a capital case, parties should be automatically severed* to defray the risk of substantially prejudicing the parties involved.

³⁹ *King v. State*, 17 S.W.3d 7, 17 (Tex. App.—Houston [14th Dist.] 2000, pet. ref'd).

⁴⁰ *Id.* at 2.

⁴¹ *Tison v. Arizona*, 481 U.S. 137 (1987).

⁴² *Patterson v. State*, 783 S.W.2d 268, 270 (Tex. App.—Houston [14th Dist.] 1989, pet. ref'd) (citations omitted);

⁴³ *New York Times*. "Governor Commutes Sentence in Texas". Ralph Blumenthal. August 31, 2007.

INTERIM CHARGE ELEVEN

Study the relationship between the public mental health system and the criminal justice and civil courts systems, including the identification and sharing of information regarding mentally ill offenders, including minors, among criminal justice and mental health agencies, the courts, state hospitals, and the Veterans Administration. Study how current confidentiality laws impact the exchange of information among groups described above. Study the sentencing of mentally ill offenders compared to non-mentally ill offenders, including minors, and the affect that has on statewide prison capacity and on the health care provided to mentally ill offenders. (Joint Charge with Senate State Affairs Committee)

Introduction

Texas, like other states, continues to have significant numbers of persons with mental illnesses involved in the criminal justice system. Each state has addressed the issue from a number of vantage points, focusing on specific areas such as jail diversion or reentry strategies for offenders being released from prison. The Texas Legislature, however, has enacted “one of a kind” policy measures that address all stages of the system starting with initial contact and proceeding throughout the criminal justice continuum. This course of action has resulted in Texas having the most comprehensive statutory and programmatic practices for offenders with mental illnesses in the country.

Despite this state's accomplishments, the Committee is cognizant of the fact that continued improvements in the system are warranted. Of particular interest is the process for the early identification of defendants with mental illnesses entering the criminal justice system and sentencing practices. This section will provide an overview of the Committee’s findings as well as recommendations for addressing these issues.

Sentencing Practices

In the mid 1990s, the Texas Legislature passed a law that has come to be viewed as a national model for the identification of persons with mental illnesses in the criminal justice system. This provision, found in the Texas Health and Safety Code, §614.017, mandates local and state governmental entities to share confidential information without a release if the purpose is for continuity of care.

One of the outcomes of this activity is the routine cross-referencing of the Texas Department of Criminal Justice (TDCJ) and the Department of State Health Services (DSHS) databases to identify offenders who have a current or former history with the public mental health system.

The following chart provides the most recent results from the cross-referencing activity:

| TDCJ/DSHS Data Match October 2008 | | | | |
|---|---------------|---------------|------------------|--------------|
| | C.I.D. | Parole | Probation | Total |
| Total TDCJ Population | 156,127 | 78,788 | 430,483 | 665,398 |
| # of MHMR Matches* | 42,556 | 21,345 | 55,276 | 119,177 |
| % of Total Population | 27.25% | 27.09% | 12.84% | 17.91% |
| # of Target Group** | 11,388 | 5,497 | 18,845 | 35,730 |
| % of Total Population | 7.29% | 6.97% | 4.37% | 5.36% |
| *Represents all clients served since 1985, including those diagnoses no longer eligible for MHMR services | | | | |
| **Schizophrenia, Bipolar, Major Depression | | | | |

As noted on the previous chart, data matching between TDCJ and DSHS provides daily and/or monthly reports on individuals found in both systems. Statistically speaking, probation, which is two and a half times larger than the prison system, should have the highest percentage of matches. As the chart reflects, however, the prison system matches are significantly higher. The question is, do the courts sentence a disproportionate number of mentally ill offenders to incarceration, and if so why?

Although no statistical analysis of sentencing practices was conducted during the interim, sufficient anecdotal evidence exists that can be offered as possible contributing factors to this situation:

1. The lack of structured residential treatment programs for offenders with mental illnesses is often cited by the courts as an issue in sentencing decisions;
2. The offender's history of treatment non-compliance and multiple arrests may influence the courts decision to revoke and/or direct sentence to the institutional division;
3. The courts may believe that the offender would receive better mental health care in the institutional setting;
4. The defendant's mental illness may never have been identified prior to sentencing, and alternatives such as specialized programs were not considered; or
5. The offender's mental health and substance abuse diagnosis excluded him/her from treatment services available to non-mentally ill offenders.

During the 80th Legislative Session, several of these factors were addressed either through new funding or legislation. The Texas Correctional Office on Offenders with Medical or Mental Impairments (TCOOMMI), for example, received \$10 million in new funds for expanding service capacity and to create specialized residential treatment programs for dually diagnosed probationers. Due to the recent implementation of these

new treatment alternatives, it is not possible to assess the new funds' impact on sentencing practices. Providing the courts with viable treatment and/or residential options, however, addresses a long standing need that judges indicated as a factor in sentencing decisions involving defendants with mental illnesses.

Early Identification

Another possible factor cited in sentencing practices was the courts' lack of knowledge regarding the defendant's mental illness. This is supported by previous studies that indicated that 29% of new admissions to TDCJ-CID had a prior Mental Health Mental Retardation (MHMR) service history, but medical records from the jail had no mental health issue noted. If the jail records noted no mental health history, it can be assumed that the courts may have been unaware of the defendant's mental impairment. To address this problem, a newly formed Judicial Task Force made this a priority during the legislative session.

In March 2007, the Council of State Governments selected Texas as one of seven states to receive a Chief Justice-Led Mental Health Task Force grant. The purpose of the grant was to identify strategies for improving the courts' response to defendants with mental illnesses. The presiding Judge of the Texas Court of Criminal Appeals, Judge Sharon Keller, created a statewide Task Force comprised of representatives from the Texas Legislature, Governor's Office, state criminal justice and mental health agencies, law enforcement, defense and prosecution.

The Task Force identified two issues as the primary focus of its work. The first issue was the early and timely identification of defendants with mental illnesses in the jail. As a result of recommendations made by the Task Force, substantive policy changes were enacted that will have a decided impact on the identification of defendants with mental illnesses, and the subsequent notification of the courts.

Senate Bill 839 represents the most significant policy change that resulted from the Task Force's efforts. S.B. 839 amended TDCJ/TCOOMMI's enabling legislation to include the Texas Department of Public Safety (DPS) in the continuity of care and exchange of confidential information provisions. In doing so, DSHS will be allowed to merge the statewide mental health service database with DPS' Texas Law Enforcement Telecommunication System. This will result in the local jail's ability to identify former or current clients of the public mental health service delivery system at the time of the initial intake and booking. The benefits of this new policy are:

- **Timely identification** – Prior to S.B. 839, local jails submitted inmate lists to the local MHMR for cross-referencing against the mental health database. Jails reported numerous difficulties in obtaining the information in a timely manner or not receiving it at all. As a result, defendants may have been booked, serviced their time and released before the match results were provided. The new law enables the jail staff to receive data results immediately, thus avoiding potential problems in treatment and/or management of the inmate once incarcerated and

- **Reduced duplication of effort** – For those defendants who are former or current clients of MHMR and have had a psychiatric assessment within the past months, the jails are no longer required to conduct another evaluation. Not only are costs associated with a redundant evaluation avoided, but inappropriate or inaccurate diagnosis and treatment interventions by the jail can be minimized as well.

Another issue the Task Force addressed, involved the process by which the courts were notified of a defendant's mental illness. Several issues emerged during the review of this matter.

- **Current statutory provisions in 16.22, Code of Criminal Procedure require the jail to notify the magistrate of a defendant's mental illness within 72 hours of arrest.** Based upon the Task Force's review of this proactive law it appears that jails are not complying with this mandate. As the provisions do not require any entity to monitor or enforce the requirement, non-compliance has resulted;
- **Statutory provisions mandating the release of certain defendants with mental illnesses on personal bond are largely ignored.** There are a number of factors that may contribute to the courts' failure to adhere to this law, including: lack of knowledge regarding the defendant's mental illness, limited community-based treatment services to order the defendant to participate in, and the judges' understandable reluctance to release a defendant with a history of treatment non-compliance; and,
- **No statutory provision for a formal notification mechanism exists.** Although 16.22 requires the jail to notify the magistrate of a defendant's mental illness, it does not specify how it should be accomplished. The jails' apparent lack of compliance could in part be attributed to the lack of specificity in the law.

Recommendations

The Committee's review of this interim charge identified both the strengths and limitations on this state's response to persons with mental illnesses involved in the criminal justice system. In order to continue this state's position as a national leader and innovator, and address any shortcomings in the system, the Committee submits the following recommendations:

1. **To ensure uniformity in the court notification process, jails should be required to forward the mental health/suicide screening intake form to the courts within the 72 hours specified in current law.** The Texas Commission on Jail Standards (TCJS) has revised the intake form to include a reference to the MHMR data match results. As a result, the form would serve as an excellent vehicle to notify the magistrates/courts of a defendant's MHMR service history and/or if a positive response to any of the mental health intake questions was noted.
2. **Require the Jail Commission to monitor compliance with the notification requirements by incorporating it in their standards and routine jail**

- inspection process.** Status reports on implementation could be provided to the TCOOMMI Advisory as part of the Jail Commissioners routine update on Memorandum of Understanding (MOU) activities.
3. **Require TDCJ-TCOOMMI to review and monitor the implementation of policy impacting offenders with mental illness.** This activity could be incorporated into the office's routine continuity of care monitoring that is statutorily required.
 4. **Conduct an annual summit of key mental health and criminal justice stakeholders to obtain feedback on statutory, regulatory and programmatic practices and challenges.** This activity would allow a formalized exchange of information on what is working and areas that require further improvement.
 5. **Require TDCJ-TCOOMMI to examine strategies for reducing the number of arrests/incarcerations of individuals with mental illnesses who are considered "frequent flyers" by the local jail and law enforcement officials.** This examination should review the existing statutory and programmatic practices that may need to be revised to minimize or eliminate the number of criminal justice encounters for certain populations.

INTERIM CHARGE TWELVE

Monitor the implementation of legislation addressed by the Criminal Justice Committee, 80th Legislature, Regular Session, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation. Specifically, report on the implementation of S.B. 909, the Texas Department of Criminal Justice Sunset legislation, including provisions relating to the Board of Pardons and Paroles, and monitor implementation of the new laws relating to copper theft (S.B. 1154, H.B. 1766, and H.B. 1767).

Background

Senate Bill 909 (80R) author's statement of intent provides the legislative intent resulting from the Sunset Advisory Commission review. It states:

The Texas Department of Criminal Justice (TDCJ) and the Correctional Managed Health Care Committee are subject to the Sunset Act and will be abolished unless continued by the legislature. The Board of Pardons and Paroles is not subject to abolishment, but is subject to a sunset review at the same time as TDCJ. As a result of its review of TDCJ, the Correctional Managed Health Care Committee, and the Board of Pardons and Paroles, the Sunset Advisory Commission recommended continuation of the agencies and several statutory modifications.⁴⁴

As proposed, S.B. 909 provides for modifications, **as recommended by the Sunset Advisory Commission**, relating to information provided to policymakers regarding the criminal justice system, provisions for better parole decision making, increased consideration of early termination of parole and probation, and oversight and transparency relating to correctional healthcare.

Compliance with S.B. 909 Requirements

A public hearing was conducted on April 2, 2008, with invited testimony by Brad Livingston—Executive Director of TDCJ, Allen Hightower—Director of Correctional Managed Health Care, and Rissie Owens—Chair of the Board of Pardons and Paroles. Each provided a compliance report concerning the following requirements of S.B. 909 and each provided actions taken or planned toward compliance. These agencies will again be subject to Sunset Advisory Commission review in four years.

The Conference Committee Report's fiscal note sets forth the actions required by S.B. 909⁴⁵:

The Texas Department of Criminal Justice (TDCJ) and the Correctional Managed Health Care Committee (the Committee) are subject to the Sunset Act and will be abolished on

⁴⁴ Senate Research Center Bill Analysis. Senate Bill 909 by Senator John Whitmire 8/9/07.

⁴⁵ Legislative Budget Board Fiscal Note. Senate Bill 909 by Senator John Whitmire 5/27/07.

September 1, 2007 unless continued by the legislature. The Parole Board of Pardons and Paroles (Parole Board) is not subject to abolishment, but is subject to Sunset review at the same time as TDCJ. This bill contains the following Sunset Commission recommendations regarding TDCJ, the Parole Board, and the Committee.

- Requires a county transferring a defendant to the TDCJ to deliver to an officer designated by TDCJ a copy of the defendant's Texas Uniform Health Status Update Form.
 - TDCJ requests information if it is available.
- Authorizes judges to permit the early release to intensive supervision for state jail inmates who pose no risk to public safety due to their medical conditions.
 - TDCJ-Community Justice Assistance Division (CJAD) informed all Community Supervision and Corrections Department (CSCD) on August 6, 2008.
- Amends the Code of Criminal Procedure relating to the intelligence database that the removal of records time limit does not apply for inmates confined in a correctional facility under contract with TDCJ, or in a county jail in lieu of being confined in a TDCJ facility.
 - Statute amended.
- Amends the Government Code relating to the hiring of community supervision department directors.
 - TDCJ-CJAD informed all CSCD directors on August 6, 2008.
- Amends the Government Code to rename the heading to Subtitle C, Title 3 to read Legislative Agencies and Oversight Committees.
 - Statute amended.
- Establishes a six-member Criminal Justice Legislative Oversight Committee.
 - Legislative members named and are meeting.
- Continues TDCJ until 2011 to provide for the next Sunset review.
 - Statute amended.
- Defines compliance with sunset recommendations.
 - Administrative process report to Sunset to be completed by November 2008.
- Requires TDCJ to use a dynamic risk assessment tool to assign a risk level to an inmate serving a sentence for a sexual offense before their sentence is discharged.
 - Targeted for completion in July 2008.

- Prohibits the department from prohibiting a parole panel to require an inmate to participate in and complete a treatment program operated by the department before the inmate is released on parole.
 - TDCJ Rehabilitation and Reentry Programs Division (RRPD) now reports to the Parole Board those offenders who are ineligible for certain programs for reasons such as custody status or medical condition.
- Authorizes scheduled meetings between management and employees on department policies and issues.
 - TDCJ Executive Director and other senior agency staff continue to meet regularly with representatives of state employee organizations.
- Allows the department to allow employees who are granted law enforcement authority to assist municipal, county, state or federal law enforcement.
 - Texas Board of Criminal Justice (TBCJ) revisions of Board Rule 152.61 to be considered in January 2008.
- Amends the conditions under which private sector industries program operates.
 - This raises the cap on inmate participating from 500 to 700 and requires minimum wages, which is already the current practice.
- Requires screening for and education concerning fetal alcohol exposure during pregnancy.
 - A brochure prepared by the Center for Disease Control and Prevention is distributed to female offenders between the ages of 18 and 44 by TDCJ. A screening instrument is also used to identify at-risk offenders, who receive additional information by viewing a video presentation.
- Establishes that the Correctional Managed Health Care Committee (CMHCC) is subject to review under the Texas Sunset Act during the same period in which TDCJ is reviewed.
 - Statute amended.
- Requires various health institutions to comply with and implement the management action recommendations of the Sunset Advisory Commission and report requested information.
 - Task currently being performed.
- Specifies the prerequisites of the presiding officer of Managed Healthcare.
 - Completed.
- Requires CMHCC to develop statewide policies for the delivery of correctional health care.
 - CMHCC develops and constantly reviews policies.

- Defines the requirements of quality of care monitoring by TDCJ and health care providers.
 - TDCJ began hiring of new staff positions to implement this section on Sept. 1, 2007. This will continue until all positions are filled. Quality monitoring has begun and quality audit instruments are being developed.
- Requires the development of appropriate alternative dispute resolution procedures.
 - The committee adopted policy CMHCC-A-07 for alternative dispute resolution at the CMHCC meeting in September of 2007.
- Expands conflict of interest provisions concerning financial and personal interests, and previous employment restrictions to parole commissioners.
 - The Parole Board revised the parole commissioner's job description and developed an affirmation document based upon the new language in 508.33. Implements requirement that selected applicant sign affirmation document upon hiring. Also requires a copy of that document to be maintained in the selected applicant's master personnel file.
- Requires the development and implementation of policies that provide the public with opportunities to speak on issues to the Board of Pardons and Paroles.
 - Program Specialist I was hired in September 2007. Revised existing board directive and submitted to Chair, Board Members, and the Board Administrator for review and comments. The Chair approved and signed the new directive, which was thereafter implemented and disseminated.
- Requires the Board of Pardons and Paroles to prepare and submit a legislative appropriations request that is separate from TDCJ. The budget structure of the Board of Pardons and Paroles shall be maintained separately from TDCJ.
 - Process being implemented.
- Requires the Board of Pardons and Paroles to implement appropriate technological solutions, maintain a system on complaints filed with the board, and implement negotiate rulemaking and alternative dispute resolution.
 - Use of technological solutions—Parole Board implemented with the adoption of BPP-Dir.08-03.03.
 - Maintain a system on complaints filed with the Board—Parole Board implemented with the adoption of BPP-Dir.08-03.04.
 - Negotiated rulemaking—Parole Board implemented with the adoption of BPP-Dir.08-03.04 and Dir.08-03.05.
 - Alternative dispute resolution—Parole Board implemented with the adoption of BPP-RES.08-02.01.
- Requires the executive director of TDCJ to establish a career ladder for parole officers.
 - TDCJ has implemented the career ladder and it is ongoing.

- Requires the Parole Board to allow the nearest relative by consanguinity to represent a deceased victim in the parole review process when no spouse, parent, child, or sibling can participate.
 - If the victim is deceased or physically incapacitated, TDCJ-Victim Services notifies the victim's nearest relative of their right to an interview with the Parole Board in the same manner as they would notify the victim.
- Requires the Parole Board to annually review and update the parole guidelines, and report to the legislature its efforts to meet them. Requires members who deviate from the parole guidelines to provide specific reasons explaining the deviation.
 - Annual meeting and reporting on parole guidelines—The Parole Board identified the need to revise the offense severity rankings based upon new penal code offenses. Reviewed penal code for legislative changes and obtained new offense NCIC codes from TDCJ mainframe. Conducted a Parole Guidelines Committee meeting to establish recommendations to the Parole Board for the new offense rankings. The Board also reviewed the existing annual report and determined that separate annual parole guidelines are required.
 - The Parole Board determined that its current practices meet these requirements and will not be changed except for a response letter stating such.
- Requires TDCJ's Parole Division to identify eligible, low-risk offenders, and establish a process for releasing these offenders from parole and mandatory supervision early.
 - TDCJ Parole Division is drafting a policy governing early release from supervision. Completion of the policy, distribution to division staff, and initial offender reviews will occur during the remainder of FY 2008.
- Provides for paid compensation for overtime accrued by a TDCJ employee.
 - Implemented and is ongoing.
- Requires the Texas Correctional Office on Offenders with Medical or Mental Impairments to identify and recommend state jail inmates eligible for early release to intensive supervision.
 - TDCJ-CJAD informed all CSCD directors on August 6, 2008. TDCJ-TCOOMMI has revised procedures to include state jail confines among the offenders eligible for Medically Recommended Intensive Supervision (MRIS).
- Requires the Council of Sex Offender Treatment to develop or adopt a dynamic risk assessment tool used in determining the likelihood that a person confined in a penal institution, who will be subject to Chapter 62, will commit an offense

described by Article 62.001(5) Code of Criminal Procedure (sex-related offense) after release.

- Targeted for completion in July 2008.
- Prohibits TDCJ from exempting any employee from a licensing requirement imposed by Section 110.302 Occupations Code (sex offender treatment provider license).
 - TDCJ sex offender staff have been notified regarding the applicability of licensure requirements.
- Updates department/commission titles in the Transportation Code regarding exemption from inscription requirement for certain state-owned motor vehicles.
 - Texas Board of Criminal Justice (TBCJ) approved revision to rule 151.71 on November 29, 2007, that exempted vehicles used to conduct home visits of offenders under supervision.
- Requires TDCJ to study using GPS tracking and electronic monitoring devices for people on parole and report the findings to the legislature.
 - TDCJ is studying different types of electronic monitoring equipment and will submit a report to the legislature no later than December 1, 2008.
- Updates provisions relating to bringing arrested persons before the proper court within specified timeframes.
 - TDCJ Parole Division has revised procedures in order to monitor transfers or releases and to provide supervision for offenders released from custody.
- Provides that a determination by the court of whether it proceeds with an adjudication of guilt on the original charge is reviewable in the same manner as a revocation hearing conducted under Section 21, Article 42.12, Code of Criminal Procedures.
 - TDCJ-CJAD informed all CSCD directors on August 6, 2008.
- Authorizes judges, for certain state jail felony offenses, to suspend the imposition of a sentence and place the defendant on community supervision or order the sentence to be executed if the conviction resulted from an adjudication of guilt of a defendant previously placed on deferred adjudication community supervision for the offense.
 - TDCJ-CJAD informed all CSCD directors on August 6, 2008.
- Permits a judge to order a defendant to make a specified donation to a nonprofit food bank or food pantry in lieu of requiring the defendant to work a specified number of hours at a community service project.
 - TDCJ-CJAD informed all CSCD directors on August 6, 2008.
- Requires probation fees to follow defendants if they are transferred to different court jurisdictions.

- TDCJ-CJAD informed all CSCD directors on August 6, 2008.
- Establishes certain requirements for conducting taste tests and awarding commissary bids within TDCJ.
 - TDCJ is working with Texas A&M University to draft a proposal for conducting these taste tests.
- Authorizes TDCJ to provide for the practice of bundling products into categories to ensure savings through bulk purchasing, discounts for advance invoice payments, and online ordering.
 - Implemented — TDCJ has bundled purchases when they prove to be in the best interest of the state.
- Requires TDCJ to adopt a zero-tolerance policy concerning the detection, prevention, and punishment of sexual abuse.
 - Although zero tolerance was an existing policy within TDCJ, revised notices have been posted in all units. The revised notices include the required information on procedures and zero tolerance of sexual abuse.
- Requires TDCJ to conduct a study regarding certain types of inmates.
 - TDCJ is preparing a report regarding confinement alternatives and other required information to be submitted to the legislature no later than December 1, 2008.
- Requires TDCJ to conduct a feasibility study of relocating the Central Prison Unit and the adjoining prison housing units from its current location in Sugar Land, Texas to a more compatible location.
 - TDCJ is currently researching issues involved in relocating the Central Unit. The city of Sugarland is preparing an analysis of the benefits to the community which will be included in the TDCJ report, both to be submitted to the legislature no later than December 31, 2008.
- Specifies that a state jail offender who otherwise meets eligibility requirements for the medical assistance program is not ineligible for the program solely on the basis of the conviction or adjudication for which the inmate was sentenced to confinement.
 - TDCJ-CJAD informed all CSCD directors on August 6, 2008. TDCJ-TCOOMMI has revised procedures to include state jail confines among the offenders eligible for MRIS.

Unresolved Issue

The Sunset Advisory Commission, in its report *Summary of Sunset Legislation - 80th Legislature, July 2007, page 19* provides:

The bill requires the Parole Board to report to the legislature explaining the parole guidelines; comparing the recommended parole approval rates to the actual approval rates for individual parole panel member, regional offices, and the state as a whole; describing when and why the actual parole approval rates do not meet the recommended approval rates under the guidelines; and listing actions taken or to be taken to meet the guidelines.

The bill also requires parole panel members who depart from the guidelines to provide a written statement describing in detail the specific reasons for the deviation. The bill provides that the approval and denial reasons currently used for parole determination will not be sufficient.

The Board of Pardons and Paroles has failed to implement the legislative intent of the mandate, contained in the second paragraph above, of S.B. 909 and continues their previously existing practices.

Recommendations

This committee recommends that Section 508.144, subsection (b) of the Government Code be amended to clearly state the legislative intent of this section—that it applies to the individual inmate and his specific guideline score, when the guideline score is a 5, 6, or 7. It is further recommended that all guideline scores become public record and that an individual inmate is informed of his specific guideline score.

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Thursday, June 5, 2008

10:00 a.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Thursday, June 5, 2008, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Rodney Ellis
Senator Glenn Hegar
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator John Carona
Senator Bob Deuell

The chair called the meeting to order at 10:22 a.m. There being a quorum present, the following business was transacted:

The chair called invited testimony for committee interim charge 6, pertaining to the use of seized and forfeiture funds.

The chair called public testimony for committee interim charge 6.

The chair called invited testimony for the committee interim charge 7, pertaining to deferred adjudication.

The chair called invited testimony for the committee interim charge 10, pertaining to trying multiple defendants from the same transaction either separately or jointly.

The chair called public testimony for committee interim charges 7 and 10.

Witness testifying and registering on the charges are shown on the attached list.

There being no further business, at 3:35 p.m. Senator Whitmire moved that the Committee be adjourned. Without objection, it was so ordered.

WITNESS LIST

Criminal Justice

June 5, 2008 - 10:00 AM

Interim charge 10

ON:

Bradley, John District Attorney (Williamson County), Georgetown, TX

Hampton, Keith Legislative Director (Texas Criminal Defense Lawyers Association),
Austin, TX

Sims, Randall 47th District Attorney (47th District Attorney Office), Amarillo, TX

Interim charge 10

Registering, but not testifying:

On:

Gay, Clifford (Self), Austin, TX

Interim charge 6

ON:

Cabaniss, Katherine (Self)

Cox, Gregg Asst. DA - Director of Public Integrity Unit (Travis County District
Attorney), Austin, TX

Ellison, Richard Attorney (Self)

Heimlich, Ed Executive Director (Informed Citizens of Texas), Houston, TX

Herberg, Clifford First Asst. District Attorney (Bexar County District Attorneys
Office), San Antonio, TX

Hurt, Harold Police Chief (Houston PD), Houston, TX

Jenkins, Jim (Self)

Kepple, Robert Executive Director (Texas District and County Attorneys Assn.),
Austin, TX

McDuffee, Richard (Self)

Morris, Karen Asst. District Attorney (Harris County District Attorney's Office),
Houston, TX

Nichols, Eric Deputy Attorney General for Criminal Justice (Office of Attorney
General), Austin, TX

O'Burke, J. Patrick Commander (Texas Department of Public Safety), Austin, TX

Sims, Randall 47th District Attorney (47th District Attorney Office), Amarillo, TX

Registering, but not testifying:

On:

Gay, Clifford (Self)

McDougal, Mike District Attorney (Montgomery County District Attorney's Office),
Conroe, TX

Ortiz, Jose Assistant Commander (Texas Department Of Public Safety), Austin, TX

Interim charge 7

ON:

Adams, Dan Director (Texas Assn. for Justice and Legal Reform)
Bradley, John District Attorney (Williamson County), Georgetown, TX
Bryan, Travis Director (Texas Assn. for Justice and Legal Reform), Pasadena, TX
Clark, Clarence (Texas Assn. for Justice and Legal Reform), Houston, TX
Creuzot, John Judge (Self), Dallas, TX
Hampton, Keith Legislative Director (Texas Criminal Defense Lawyers Association),
Austin, TX
Hardy, Leon (Texas Assn. for Justice and Legal Reform)
Mullins, Mike (Self), Sweeny, TX
Mullins, Trish Director (Texas Assn. for Justice and Legal Reform), Sweeny, TX
Sandifer, Rob Director (Texas Assn. for Justice and Legal Reform), Austin, TX
Sims, Randall 47th District Attorney (47th District Attorney Office), Amarillo, TX
Thomas, Michael (Self), Plano, TX
White, Bonita Division Director (Community Justice Assistance Division), Austin, TX

Registering, but not testifying:

On:

Gay, Clifford (Self), Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Wednesday, July 9, 2008

10:00 a.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Wednesday, July 9, 2008, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator Glenn Hegar
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator John Carona
Senator Bob Deuell
Senator Rodney Ellis

The chair called the meeting to order at 10:05 a.m. There being a quorum present, the following business was transacted:

The chair called invited testimony for interim charge 3, pertaining to the reduction of illegal drug use.

The chair called public testimony for interim charge 3.

The chair called invited testimony for interim charge 5, pertaining to the reduction of law enforcement deaths in the line of duty.

The chair called public testimony for interim charge 5.

The chair called invited testimony for interim charge 8, pertaining to the reduction in re-victimization of child abuse victims.

The chair called public testimony for interim charge 8.

Witnesses testifying and registering on the charges are shown on the attached witness list.

There being no further business, at 1:07 p.m. Senator Whitmire moved that the Committee be adjourned. Without objection, it was so ordered.

WITNESS LIST

Criminal Justice
July 9, 2008 - 10:00 AM

Interim Charge 3

ON:

Furce, Stan Director (Houston High Intensity Drug Trafficking Area Program),
Houston, TX
Hatcher, Johnny Manager of Regulatory Programs (Department of Public Safety),
Austin, TX
Hayes, Tracey Field Organizer (American Civil Liberties Union of Texas), Austin, TX
Kowal, John Police Officer (Houston Police Department), Houston, TX
Latimore, Sharnett Group Supervisor (Drug Enforcement Administration), Houston,
TX
Maples, Michael Director of Program Services (Department of State Health Services),
Austin, TX
McKay, Mimi Committee Director of Mental Health and Substance Abuse (Department
of State Health Services), Austin, TX
Ortiz III, Jose Acting Commander (Texas Department of Public Safety), Austin, TX

Registering, but not testifying:

On:

Gaylor, Tom Deputy Executive Director (Texas Municipal Police Association), Austin,
TX
Steen, Philip Duane Assistant Commander (Texas Department of Public Safety-
Narcotics Service), Austin, TX

Interim Charge 5

ON:

Braaten, Timothy Executive Director (Texas Commission on Law Enforcement
Officers Standard and Education), Austin, TX
Gaylor, Tom Deputy Executive Director (Texas Municipal Police Association), Austin,
TX
Jones, Chris (Combined Law Enforcement Associations of Texas), Austin, TX
Lewis, Bill Legislative Liaison (Mothers Against Drunk Driving), Argyle, TX
Wilkison, Charley Legislative Director (Combined Law Enforcement Associations of
Texas), Austin, TX

Registering, but not testifying:

On:

Heironimus, James Director (Texas Commission on Law Enforcement), Austin, TX
Woodall, Frank Director, Education & Training (Commission on Law Enforcement
Officer Standards & Education), Austin, TX

Interim Charge 8

ON:

Hogue, Patricia Attorney, Director of Education and Outreach (Texas Assoc. for the
Protection of Children), Dallas, TX
Mills, Amy Assistant District Attorney (Tarrant County District Attorney's Office),
Fort Worth, TX
Powers, Dan Clinical Director (Children's Advocacy Centers of Texas), Plano, TX
Rauls, Joy Director of Community Relations (Children's Advocacy Centers of Texas),
Austin, TX

MINUTES

SENATE COMMITTEE ON CRIMINAL JUSTICE

Thursday, November 13, 2008

10:00 a.m.

Capitol Extension, Room E1.016

Pursuant to a notice posted in accordance with Senate Rule 11.18, a public hearing of the Senate Committee on Criminal Justice was held on Thursday, November 13, 2008, in the Capitol Extension, Room E1.016, at Austin, Texas.

MEMBERS PRESENT:

Senator John Whitmire
Senator Kel Seliger
Senator John Carona
Senator Juan Hinojosa

MEMBERS ABSENT:

Senator Bob Deuell
Senator Rodney Ellis
Senator Glenn Hegar

The chair called the meeting to order at 10:03 a.m. There being a quorum present, the following business was transacted:

The chair called invited testimony for interim charge 1, pertaining to the use of private prisons by the Texas Youth Commission and the Texas Department of Criminal Justice.

The chair called invited testimony for interim charge 4, pertaining to the current operations of the Texas Department of Criminal Justice.

The chair called invited testimony for interim charge 9, pertaining to the processes for re-entry of criminal offenders in communities.

The chair called public testimony for interim charges 1, 4, and 9. Witnesses testifying and registering on the charges are shown on the attached witness list.

There being no further business, at 3:15 p.m. Senator Whitmire moved that the Committee be adjourned. Without objection, it was so ordered.

WITNESS LIST

Criminal Justice

November 13, 2008 - 10:00 AM

Interim Charge 1

ON:

Libal, Bob Campaign Coordinator (Grassroots Leadership), Austin, TX
Livingston, Brad Executive Director (Texas Department of Criminal Justice),
Huntsville, TX
McCullough, Daniel (Self), Lynden, WA
Noble, Shirley (Self), Palmdale, CA
Reinlie, Lauren Project Director (Texans for Public Justice), Austin, TX
Rodriguez, Ronald Attorney (Self), Laredo, TX
Townsend, Cheryl Executive Commissioner (Texas Youth Commission), Austin, TX
Williams, Laurie (Self), Lynden, WA

Interim Charge 4

ON:

Agapetus, Angie (Self), Houston, TX
DeBottis, Gina Executive Director (Special Prosecution Unit), Huntsville, TX
Dow, Susan Budget Analyst (Legislative Budget Board), Austin, TX
Dufour, Doots (Self), Austin, TX
Giniger, Michael Vice President (Gateway Foundation), Houston, TX
Green, Becki LCDCI-CART (Estelle Unit Substance Abuse Felony Punishment
Facility), Huntsville, TX
Hill, Paul Union Steward, Correctional Officer (American Federation of State, County,
and Municipal Employees), Huntsville, TX
Livingston, Brad Executive Director (Texas Department of Criminal Justice),
Huntsville, TX
Loveay-McCrone, Brooke (Self), Gatesville, TX
Lowry, Lance Secretary (American Federation of State, County, and Municipal
Employees), Huntsville, TX
Luedke, Bernard (Self), Waco, TX
Moriarty, John Inspector General (Texas Department of Criminal Justice), Austin, TX
Otto, Shirley SAFP Graduate (Gateway Foundation), Gatesville, TX
Robinson, Janice Transitional Coordinator LCDC (Gateway Foundation Treatment
Program), Kyle, TX
Rubac, Gloria (Texas Death Penalty Abolition Movement), Houston, TX
Simpson, Matthew Policy Strategist (American Civil Liberties Union of Texas),
Austin, TX
Wagner, Fancy (Gateway Foundation), Copperas Cove, TX
White, Garland (Winners' Circle of Texas), Waco, TX

Wolf, Kerry (Self), Cedar Park, TX

Registering, but not testifying:

On:

Dieter, Alison (Self), Austin, TX

Olsen, Brian Executive Director (American Federation of State, County, and Municipal Employees), Huntsville, TX

Otto, Jerry (Gateway Foundation), Gatesville, TX

Palmer, Margie Program Director (Gateway and Substance Abuse Treatment), Gatesville, TX

Interim Charge 9

ON:

Arnold, James President (Skills for Life, Inc.), Houston, TX

Illes, Leighton Director (Ft. Bend County Community Supervision and Corrections Department), Rosenberg, TX

Kennedy, Grant Director (St. Joseph House), Houston, TX

Livingston, Brad Executive Director (Texas Department of Criminal Justice), Huntsville, TX

McGee, Shawn (Self), Austin, TX

Rayfield, Penny Planning Council Chair (Austin/Travis County Reentry Roundtable), Austin, TX

Renteria, Lori (Self), Austin, TX

Ringer, Frank Member (Central East Austin Need and Seed Project), Austin, TX

Thompson, Rodney Director (Angelina County Community Supervision and Corrections Division), Lufkin, TX

Registering, but not testifying:

On:

Cates, Phil (Self), Austin, TX

Miller, Tyeshia (Self), Houston, TX

Stoeltje, Mark Executive Director (Our House San Antonio), San Antonio, TX